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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
99CV0772

-----X
KENNETH WYNDER,
Plaintiff,
- against -
JAMES MCMAHON, DAVID SPAHL, ROBERT JONES,
LOUIS B. BARBARIA, CRAIG MASTERSON, JOSH
KEATS, Individually, and JOHN DOE
employees One through Ten of the NEW YORK
STATE POLICE who violated the
Constitutional Rights of Plaintiff while
operating under Color of law or direction
from named Defendants,
Defendants.

-----X
April 12, 2005
11:30 a.m.

Deposition of KENNETH N. WYNDER,
JR., taken by the Defendants, pursuant to
Notice, held at the offices of New York
State Attorney General, 120 Broadway, New
York, New York, before Tammy O'Berg, a
Shorthand Reporter and Notary Public of
the State of New York.

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94278

A P P E A R A N C E S:

RICHARD J. MERRITT, ESQ.

Attorney for Plaintiff

2 Birs Avenue

Lindenhurst, New York 11757

STATE OF NEW YORK

Office of Attorney General

Eliot Spitzer

Attorneys for Defendants

120 Broadway

24th Floor

New York, New York 10271

BY: SUSAN H. ODESSKY, ESQ.

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND

5 94278
6 AGREED by and between the Attorneys for
7 the respective parties hereto that filing
8 and sealing be and the same are hereby
9 waived.

10 IT IS FURTHER STIPULATED AND
11 AGREED that all objections except as to
12 the form of the question, shall be
13 reserved to the time of the trial.

14 IT IS FURTHER STIPULATED AND
15 AGREED that the within examination may be
16 signed and sworn to before any notary
17 public with the same force and effect as
18 though signed and sworn to before this
19 Court.

20 * * *
21 MS. ODESSKY: Can you mark this,
22 please.

23 (Third amended complaint marked
24 Defendants' Exhibit A for identification.)

25 K E N N E T H N. W Y N D E R, JR.

Having first been duly sworn by a Notary

□

4

1
2 Public of the State of New York, was
3 examined and testified as follows:
4 EXAMINATION BY
5 MS. ODESSKY:
6 Q. Please state your name for the
7 record.

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8 A. Kenneth N. Wynder, Jr.

9 Q. Where do you reside?

10 A. 519 Thomas Street, Stroudsburg,

11 Pennsylvania 18360.

12 Q. Good morning, Mr. Wynder. As

13 you know, I'm an Assistant Attorney

14 General in the Office of the New York

15 State Attorney General, and I represent

16 the defendants in this matter.

17 Mr. Wynder, have you been

18 deposed before?

19 A. No.

20 Q. I'm just going to go over some

21 of the ground rules with you. I believe

22 that your attorney, Mr. Merritt, I'm sure

23 has spoken to you already about these, but

24 I'll just review them briefly.

25 The court reporter is here

1 WYNDER
2 obviously recording my questions and your
3 answers. Please try to answer as clearly
4 as possible and try to speak in words
5 rather than using gestures, such if you
6 want to say yes, use the word "yes" rather
7 than nodding your head, because it's hard
8 for her to take down gestures.
9 Please try to wait for me to
10 finish my question before you answer. And

94278

11 I'll try to do the same for you; if you
12 are answering, I'll try not to cut you
13 off.

14 Please let me know, if I by
15 mistake interrupt your answer. Let me
16 know because I want you to give a complete
17 answer.

18 Do you understand?

19 A. Yes.

20 Q. Let me know if you need to take
21 a break or if you need time to consult
22 with your attorney, and at an appropriate
23 time we can take a short break for lunch.

24 MS. ODESSKY: I note for the
25 record now that we're starting and it's

6

1 WYNDER
2 slightly after 11:30.
3 Q. Mr. Wynder, if I ask you
4 something and you don't understand my
5 question, don't answer it. Just tell me
6 you don't understand it and I'll be happy
7 to try to rephrase it. Okay?
8 A. Okay. Yes.
9 Q. If you answer my question, then
10 I'll assume that you understood it.
11 Agreed?
12 A. Yes.
13 Q. Are you currently taking any

94278

14 medication?

15 A. Yes.

16 Q. What medication are you taking?

17 A. Buford (phonetic) -- it's like a
18 sedative to help me sleep.

19 Q. How did you spell that? Can you
20 spell it?

21 A. I don't remember the spelling of
22 it. Buford. I forgot the name of it. I
23 just fill the prescription. Well, he
24 gives it to me.

25 Q. It's a sleeping pill?

7

1 WYNDER

2 A. It's a medication for sleep.

3 Q. That's to help you sleep?

4 A. Yeah.

5 Q. Have you taken it today?

6 A. No.

7 Q. When was the last time that you
8 took it?

9 A. Last week.

10 Q. Do you take that on a regular
11 basis?

12 A. When I need it.

13 Q. Is there anything about that
14 medication that would make it difficult
15 for you to concentrate or understand my
16 questions today?

94278

17 A. No.

18 Q. Any other medication that you
19 are currently taking?

20 A. Not right now.

21 Q. Are you under the influence of
22 alcohol today?

23 A. No.

24 Q. Any nonprescription drugs?

25 A. No.

□

8

1 WYNDER

2 Q. Are you currently receiving
3 psychiatric treatment?

4 A. Yes.

5 Q. Who are you being seen by
6 currently?

7 A. Dr. Hugh Butts.

8 Q. Has Dr. Butts given a diagnosis?

9 A. Yes.

10 Q. What is that diagnosis?

11 A. Post traumatic stress syndrome,
12 DMV 4.

13 Q. When did you get that diagnosis,
14 if you can recall?

15 A. 1998. Around April 1998.

16 Q. When was the last time that
17 you've seen Dr. Butts?

18 A. It's been about three months.

19 Q. Do you see him currently on a

94278

20 regular basis?

21 A. when needed. Probably every two
22 months, but if I need to see him, I have
23 an appointment in the next two weeks to
24 see him.

25 Q. You say you have an appointment

□

9

1 WYNDER

2 to see him?

3 A. Yes.

4 Q. When is that scheduled for?

5 A. I believe it's right after Labor
6 Day.

7 Q. Is there anything about the
8 condition that you've been diagnosed with
9 or the treatment that would affect your
10 ability to testify here today?

11 A. No.

12 Q. Are there any other medical
13 conditions that you currently are
14 experiencing?

15 A. No.

16 Q. Are you under treatment for
17 anything else other than what we've just
18 discussed?

19 A. No.

20 Q. Mr. Wynder, when did you learn
21 that you were going to be deposed today?

22 A. When I -- July 29 -- when our

94278
23 July 29 schedule was canceled.
24 Q. Did you do anything to prepare
25 for the deposition today?

10

1 WYNDER

2 A. A little bit. I read.

3 Q. What did you read?

4 A. All of my paperwork that I

5 have -- that I have in my possession.

6 Q. Now, the paperwork that you have

7 in your possession, are these all

8 documents that you have provided your

9 attorney with?

10 A. Correct.

11 Q. Can you tell me what that

12 paperwork consists of that you have in

13 your possession?

14 A. Memos.

15 Q. Who are the memos from?

16 A. Memos of interaction within the

17 State Police.

18 Q. Are these all memos from you or

19 are they from other individuals?

20 A. Some are from me, some are from

21 other individuals.

22 Q. They are all from individuals

23 within the State Police?

24 A. Correct. And outside, also.

25 Q. When you say "outside," who --

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11

1 WYNDER
2 what other individuals outside the State
3 Police?
4 A. Workers' Compensation Board.
5 Q. Anyone else?
6 A. EEOC.
7 Q. Anyone else?
8 A. Department of Justice.
9 Q. Anyone else?
10 A. President of the United States.
11 Hillary Clinton, Senator Hillary Clinton.
12 Q. Anyone else?
13 A. State Insurance Fund.
14 Q. Anything else?
15 A. Attorney General.
16 Q. Is that Eliot Spitzer?
17 A. Eliot Spitzer.
18 Q. Anyone else?
19 A. Paperwork that we received from
20 you in discovery.
21 Q. What paperwork did you review
22 that you had received from me?
23 A. Information that wasn't revealed
24 during my workers' compensation hearings.
25 Q. What did that include?

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94278

1 WYNDER
2 A. Confidential statements.
3 Q. Who were those statements by?
4 A. Lieutenant Barbaria, Terrence
5 O'Mara.
6 Q. Anyone else?
7 A. Major Young, Captain Klusacek.
8 Q. Anyone else?
9 A. U.S. Customs.
10 Q. Anyone else?
11 A. FBI.
12 Q. Anyone else?
13 A. Marine Midland Bank.
14 Q. Any others?
15 A. Citibank.
16 Q. Okay.
17 A. Central Hudson Gas and Electric.
18 Q. Okay.
19 A. United States Bankruptcy Court.
20 Q. Anyone else?
21 A. Not that I can recall right now.
22 Q. Now, of those documents that
23 you've just mentioned, is it your
24 testimony that in each case these are
25 documents that you just saw for the first

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13

1 WYNDER
2 time when they were produced to
3 Mr. Merritt in discovery?

94278

4 A. No, the only ones that was just
5 produced in discovery was Captain
6 Klusacek, Major Young, Terrence O'Mara,
7 Lieutenant Barbaria's confidential
8 statement.

9 Q. Anything else that was just
10 seen?

11 A. No, not right now -- that I can
12 recall.

13 Q. So would it be fair to say that
14 the other documents you've been making
15 reference to were documents that you had
16 seen in the course of the workers'
17 Compensation hearing?

18 A. Yes. We requested those
19 previous that you just put, but we were
20 told that they didn't exist.

21 Q. Is there anything else that you
22 read in preparation for this deposition?

23 A. No.

24 Q. Other than Mr. Merritt, did you
25 speak to anyone else regarding the

□

14

1 WYNDER

2 deposition today?

3 A. I don't understand the question.

4 Q. Other than your attorney,
5 Mr. Merritt, did you speak to any other
6 individual regarding the fact that you

94278

7 were going to be deposed today?
8 A. No.
9 Q. Mr. Wynder, do you have any
10 nicknames or other names besides Kenneth
11 wynder?
12 A. No.
13 Q. What is your date of birth?
14 A. July 17, 1963.
15 Q. Can you describe for me your
16 educational background?
17 A. BA in criminal justice.
18 Q. Where did you receive that?
19 A. John Jay College of Criminal
20 Justice.
21 Q. When did you get that BA?
22 A. 2002.
23 Q. Prior to that, did you attend
24 high school?
25 A. Yes.

15

1 WYNDER
2 Q. Where did you go to high school?
3 A. Christ the King Regional High
4 School.
5 Q. Where is that?
6 A. Maspeth, Queens.
7 Q. When did you graduate from
8 there?
9 A. '81. No. '85.

94278

10 Q. Now, have you had other
11 schooling --

12 A. I --

13 Q. That's okay.

14 Did you have any other
15 schooling?

16 A. New York State Police Academy.

17 Q. When did you graduate from the
18 Academy?

19 A. 3/20/1987.

20 Q. Other than that, any other
21 education or vocational school, trade
22 school?

23 A. No, not really.

24 Q. Any kind of on-the-job training
25 other than the --

□

16

1 WYNDER

2 A. Drug recognition expert.

3 Q. Did that involve the taking of a
4 course?

5 A. Yes, it did.

6 Q. When did you take that course?

7 A. '92. Probably '91, '92. '91.

8 Also academic instructor.

9 Q. Is that another course that you
10 took?

11 A. Yes. That was 1992 at the New
12 York State Police Academy.

94278

13 Q. Any other special courses
14 besides the regular Academy courses that
15 you had?

16 A. No.

17 Q. Any other kind of training for
18 the New York State Police or any other job
19 that you've had?

20 A. Series 7 when I worked on Wall
21 Street.

22 Q. I'm sorry?

23 A. Series 7.

24 Q. What does that entail?

25 A. Stockbroker.

17

1 WYNDER

2 Q. Is that one course or a series
3 of courses?

4 A. Two parts. I only completed the
5 first part.

6 Q. For that did you receive some
7 type of a certificate or a diploma?

8 A. Only for the -- I didn't finish
9 the second part, so, no. I only finished
10 the first part.

11 Q. Have you ever been in the
12 military?

13 A. No.

14 Q. Are you currently married?

15 A. Yes.

94278

- 16 Q. Your wife's name?
17 A. Jacqueline.
18 Q. Can you spell it?
19 A. J-a-c-q-u-e-l-i-n-e.
20 Q. Does she use your last name?
21 A. Logan-wynder, yes.
22 Q. Is that hyphenated?
23 A. Yes, Logan, hyphen, wynder.
24 Q. How long have you been married?
25 A. Five years.

18

- 1 WYNDER
2 Q. Does she currently reside with
3 you?
4 A. Yes.
5 Q. Do you have any children?
6 A. One.
7 Q. Is that a boy or a girl?
8 A. Girl.
9 Q. How old is she?
10 A. Eight.
11 Q. Does she reside with you?
12 A. Yes.
13 And I have an older daughter --
14 her name is Alexis.
15 Q. You have an older daughter?
16 A. But that's by her first
17 marriage.
18 Q. By your wife's first marriage?

94278

19 A. Tempestt is her name,
20 T-e-m-p-e-s-t-t.
21 Q. Had you been married previously?
22 A. Yes.
23 Q. The name of your previous wife?
24 A. Chandra Wynder, C-h-a-n-d-r-a.
25 Her maiden name is Hanes, H-a-n-e-s.

19

1 WYNDER
2 Q. When did you marry Chandra?
3 A. I can't recall right now.
4 Q. I'll leave a space in the
5 deposition and when you get it, you can
6 insert it there.
7 (Insert)
8 Q. How long were you married?
9 A. I believe about 10 years.
10 Q. When were you divorced?
11 A. Officially, I believe it was in
12 1999.
13 Q. Had you been legally separated
14 prior to that?
15 A. Yes.
16 Q. When was that?
17 A. I believe '97 or '98. She moved
18 to Atlanta, as I can recall.
19 Q. Can you tell me where she
20 currently resides?
21 A. I believe Atlanta. I don't

94278

22 know. I haven't spoken to her.

23 Q. When was the last time that you
24 were in touch with her?

25 A. Maybe six or seven years.

20

1 WYNDER

2 Probably eight.

3 Q. To your knowledge, does Chandra,
4 is she aware of the incidents contained in
5 your complaint?

6 A. I don't know. She was -- she
7 was already -- she wasn't living with me.
8 We were separated by the time 1997
9 started.

10 Q. Besides this case which is filed
11 in the Eastern District of New York,
12 federal court, have you brought any other
13 lawsuits besides this case?

14 MR. MERRITT: Against whom?

15 MS. ODESSKY: Against anyone.

16 MR. MERRITT: I'll object to
17 that.

18 MS. ODESSKY: I think under the
19 federal rules, he still must answer that
20 question. I'm entitled to know whether he
21 has other lawsuits.

22 MR. MERRITT: Only if it's
23 relevant.

24 MS. ODESSKY: No, relevance is
Page 18

94278

25 not an objection.

21

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WYNDER

2

MR. MERRITT: It has to lead to

3

discoverable evidence.

4

MS. ODESSKY: I'm entitled to

5

know if he's made a similar claim --

6

MR. MERRITT: Then limit your

7

question.

8

MS. ODESSKY: No, I believe I'm

9

entitled -- we can call the judge if

10

necessary.

11

MR. MERRITT: I don't think you

12

are entitled to any lawsuit he's ever

13

brought in his lifetime.

14

MS. ODESSKY: Should we call the

15

judge?

16

MR. MERRITT: We'll hold it for

17

a ruling. You are entitled to a

18

relevant -- you're not going into a

19

fishing expedition on every small claims

20

ticket he's ever had in his life.

21

You've just asked about any kind

22

of litigation he's been involved with

23

since day one.

24

MS. ODESSKY: You can make your

25

argument when we call the judge for a

94278

22

1 WYNDER

2 ruling.

3 MR. MERRITT: Let's get it over
4 with.

5 MS. ODESSKY: I think we should
6 hold off, because I have a feeling we may
7 have to call for other things at this
8 point.

9 MR. MERRITT: If you want to ask
10 questions related to this case, I have no
11 problem with that, but if it's not related
12 to this case, I see no reason why he
13 should have to review lawsuits he's
14 brought in the past.

15 BY MS. ODESSKY:

16 Q. Have you ever filed a lawsuit
17 making claims related to or similar to any
18 of the claims contained in your complaint?

19 A. No.

20 MR. MERRITT: We have to give
21 her that.

22 MS. ODESSKY: For the record,
23 have you provided Mr. Wynder with a
24 document?

25 MR. MERRITT: Yes, because he's

□

23

1 WYNDER

94278

2 going to change his answer to your last
3 question.

4 MS. ODESSKY: For the record,
5 I'll note that Mr. Wynder is conferring
6 with his attorney.

7 MR. MERRITT: This is not the
8 one I'm talking about. I've got it in
9 here. Here.

10 we're dealing with a claim
11 you've got in the Court of Claims.

12 Do you know what I'm talking
13 about?

14 THE WITNESS: Oh, okay.

15 MR. MERRITT: There is a case in
16 the Court of Claims.

17 MS. ODESSKY: Can I just ask
18 before we go on --

19 Q. Mr. Wynder, what document were
20 you just looking at?

21 MR. MERRITT: I gave him an
22 order. It was the wrong order.

23 A. This is the order of a
24 confidential informant.

25 MS. ODESSKY: For the record,

1 WYNDER
2 this is an order by Magistrate Pollack
3 dated June 22, 2005 relating to the
4 in-camera review of information regarding

5 a confidential informant⁹⁴²⁷⁸ in this case.

6 MR. MERRITT: I think what I'm
7 looking for is in this pile. It was a
8 case that's on appeal.

9 Q. Are you familiar with the case
10 in the Court of Claims that Mr. Merritt is
11 referring to?

12 A. Yes.

13 Q. what case is that?

14 A. That's in reference to my back
15 pay.

16 Q. In what county has that been
17 filed?

18 A. It would be Albany County. That
19 was filed by the New York State PBA,
20 Troopers Association, in reference to the
21 fact that I've never received, since my
22 disability was effective in 1999, April of
23 1999, State Police refused to pay two
24 years of back pay, sick leave and other
25 accruals that are due me.

25

1 WYNDER

2 Q. where does that case stand right
3 now?

4 A. It's in appeals. Appeals
5 decision.

6 Q. Has there been a ruling in that
7 case?

8 A. As to -- oh, the ruling was that
9 I didn't exhaust my administrative
10 remedies.

11 MR. MERRITT: You can mark this
12 for identification if you so desire.
13 That's the decision in the case. That
14 answers your question.

15 MS. ODESSKY: Thank you.

16 Mr. Merritt, had this previously
17 been provided to us?

18 MR. MERRITT: I just got it.

19 MS. ODESSKY: You just received
20 it?

21 I'll note for the record that
22 Mr. Merritt has provided me with what
23 appears to be a judgment in Albany
24 County.

25 It's dated February 3, 2005 and

26

1 WYNDER
2 it is stamped Albany County Clerk. It
3 says, "Kenneth Wynder, petitioner, for a
4 judgement pursuant to Article 78 against
5 Wayne E. Bennett, Superintendent of the
6 New York State Division of State Police
7 and the New York State Division of State
8 Police, respondents."

9 I just ask that this be marked
10 as an exhibit, Defendants' B.

11 94278
(Judgment marked Defendants'
12 Exhibit B for identification.)

13 MR. MERRITT: Just let the
14 record reflect that I'm not involved in
15 that litigation in any way. The
16 litigation is done by another law firm.

17 Q. Mr. Wynder, it appears to me
18 from this document that the law firm who
19 is representing you in this case is a --
20 is Gleason, Dunn, Walsh and O'Shea; is
21 that correct?

22 A. Correct.

23 Q. And Mr. Clay J. Lodovice,
24 C-l-a-y, J. is the middle initial,
25 L-o-d-o-v-i-c-e.

27

1 WYNDER

2 So Mr. Merritt is accurate when
3 he said that he has not been involved in
4 that litigation?

5 A. He has not been involved.

6 Q. So it's your understanding,
7 Mr. Wynder, that your attorney in that
8 matter is taking an appeal from that?

9 A. Yes.

10 Q. Do you know if the appeal has
11 been filed?

12 A. To the point, no, it has not
13 been. Only a notice of appeal was

94278

14 entered.

15 Q. Thank you.

16 MS. ODESSKY: Off the record.

17 (Discussion off the record.)

18 Q. Mr. Wynder, did you provide this
19 document that we've just been looking at,
20 Defendants' Exhibit B, to Mr. Merritt?

21 A. Yes.

22 Q. When did you provide that to
23 him?

24 A. Just recently when I was going
25 over all my paperwork.

28

1 WYNDER

2 Q. For the record, to be absolutely
3 clear, this judgment in Albany County, and
4 the Index Number is 4967-04, this is the
5 Article 78 proceeding that I referred to
6 earlier and that is marked now as
7 Defendants' Exhibit B.

8 Mr. Wynder, is it your
9 understanding that all the documents that
10 you've provided Mr. Merritt with have been
11 provided to the defendants?

12 A. Yes. Whatever I have given him.

13 Q. Other than the Court of Claims
14 action, are there any other lawsuits that
15 either relate to the allegations in this
16 complaint or are similar to, if not the

94278

17 same allegations in this complaint?

18 A. Repeat that. To this one now

19 (indicating)?

20 Q. I'm saying other than this Court

21 of Claims case, are there any other

22 lawsuits in any other courts?

23 A. Not that I can recall.

24 Q. You were involved in a workers'

25 Compensation proceeding in which

29

1 WYNDER

2 Mr. Merritt represented you?

3 A. Correct.

4 Q. That involved the same causes of

5 action that are in your federal lawsuit,

6 correct?

7 A. Correct.

8 Q. Other than that administrative

9 proceeding, any other administrative

10 proceedings that involved the same claims

11 or causes of action.

12 MR. MERRITT: I have to object

13 and question -- Workers' Compensation,

14 unfortunately, although it has some

15 similarities to the injuries involved in

16 this case, is not the same legal action or

17 it doesn't have the same relief or it

18 doesn't demand 1983 or any Title 7

19 relief.

94278
20 So, it is kind of a misleading
21 question, so I would like you to rephrase
22 that.
23 MS. ODESSKY: I'll rephrase
24 that. You are correct, Mr. Merritt.
25 Q. I'm just trying to ascertain,

30

1 WYNDER
2 other than the workers' Compensation,
3 which we'll get to later on, have you
4 filed any actions either in a court or
5 before any type of administrative body
6 regarding any of the claims or allegations
7 or the incidents that you relate in your
8 federal complaint?
9 (Witness conferred with counsel
10 off the record.)
11 MR. MERRITT: Can we take a
12 break?
13 MS. ODESSKY: I note for the
14 record that we're taking a small break for
15 Mr. Merritt and Mr. Wynder to confer.
16 (Brief recess taken.)
17 MS. ODESSKY: Are we back on the
18 record?
19 MR. MERRITT: Yes.
20 He wasn't sure if he should
21 expound upon the EEOC complaint, because
22 it is related to this legal action.

23 MS. ODESSKY: 94278 Yes.

24 MR. MERRITT: The EEOC complaint

25 is a matter of record. It's part of the

31

1 WYNDER

2 complaint, as a matter of fact. You'll be

3 aware that he wasn't sure if it was

4 related to this action.

5 BY MS. ODESSKY:

6 Q. For the record, you had filed a

7 complaint with the EEOC?

8 A. Correct.

9 Q. We'll get to that later on.

10 Q. Mr. Wynder, have you yourself

11 ever been named as a defendant in a

12 lawsuit?

13 A. Not that I can recall.

14 Q. Have you ever been called to

15 testify as a witness in any matter for

16 anyone else other than your own cases?

17 MR. MERRITT: Let the record

18 reflect that Kenneth Wynder was a New York

19 State trooper for a period of over 12

20 years, and during that period of time, he

21 was called upon numerous times involving

22 traffic citations, arrests that he had

23 made. I don't know if he can remember

24 them all.

25 But if you are asking for all

94278

32

1 WYNDER

2 those --

3 MS. ODESSKY: No, not
4 necessarily.

5 Mr. Merritt, I would ask that
6 you please limit your objections. Under
7 the federal rules there are no speaking
8 objections, and I'd ask you not to
9 answer. You can certainly confer with
10 Mr. Wynder, but this is Mr. Wynder's
11 deposition and he should be answering the
12 questions.

13 MR. MERRITT: Go ahead.

14 Q. Mr. Wynder, as a New York State
15 trooper, during your employment, did you
16 testify in New York State Police matters?

17 A. Yes.

18 Q. Have you ever been named as a
19 witness by any fellow member of the New
20 York State Police regarding a civil
21 lawsuit?

22 A. Not that I can recall.

23 Q. Have you ever appeared as a
24 witness on behalf of anyone else in any
25 type of an administrative proceeding such

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94278

1 WYNDER

2 as a Workers' Compensation hearing?

3 A. Workers' Compensation hearing?

4 No.

5 Q. Mr. Wynder, how long were you
6 employed at the New York State Police?

7 A. 3/30/87 until April 3 -- no,
8 July 7, 1999.

9 Q. Can you just go through the
10 different assignments that you had during
11 your career?

12 A. Basic instruction, which is the
13 State Police Academy in Albany.

14 Q. That was six months from the
15 March 30, 1987 date?

16 A. Correct.

17 Q. After you left the Academy,
18 where did you go?

19 A. I was stationed at SP Peekskill.

20 Q. What did you do there?

21 A. Road trooper.

22 Q. What did your duties involve as
23 a road trooper?

24 A. Law enforcement.

25 Q. When you say "law enforcement,"

□

34

1 WYNDER

2 what in particular were you responsible to
3 do?

94278

4 A. Traffic, complaints.

5 Q. Anything else?

6 A. Anything that was asked.

7 Q. Did you have a partner when you
8 were at SP Peekskill?

9 A. No, we only paired up at night
10 and it was numerous partners. No set
11 partners.

12 Q. Did you have any particular
13 supervisor when you were at SP Peekskill?

14 A. Station commander and
15 sergeants. There were quite a few.

16 Q. Let me back up a for a moment.
17 Can you recall the time frame
18 when you were at SP Peekskill?

19 A. Yeah, 1987, September of 1987,
20 to, I believe, '93. During -- or '92.
21 Yeah, '92.

22 Q. So those five years. During
23 that time, was there one station
24 commander?

25 A. Bobby Welsh. Robert Welsh.

35

1 WYNDER

2 Q. Welsh?

3 A. Yes.

4 Q. Underneath Commander Welsh, did
5 you have any direct supervisor?

6 A. Thomas Cerrone, C-e-r-r-o-n-e.

94278

7 Q. Anyone else?
8 A. Sergeant Antalek, A-n-t-a-l-e-k.
9 Q. Anyone else?
10 A. I can't recall right now. They
11 were basically there for a while.
12 Q. Were you disciplined for any
13 reason when you were at SP Peekskill?
14 A. At SP Peekskill?
15 Q. Yes.
16 A. Yes. I believe I recall my car
17 wasn't inspected.
18 Q. I'm sorry --
19 A. My car was uninspected.
20 Q. What happened as a result of
21 that?
22 A. Letter censure.
23 Q. Anything else as a result of
24 that?
25 A. No.

36

1 WYNDER
2 Q. Any other discipline?
3 A. Not that I can recall.
4 MR. MERRITT: She's asking --
5 THE WITNESS: She said at
6 Peekskill.
7 MR. MERRITT: Oh, only limited
8 to Peekskill?
9 MS. ODESSKY: At this point,
Page 32

94278

10 yeah.

11 Let the record reflect that
12 Mr. Merritt has shown Mr. Wynder a
13 document. I assume that's regarding
14 discipline.

15 Q. Can you tell me what
16 Mr. Merritt's document referred to?

17 A. That's when I was stationed at
18 another station. SP Hawthorne.

19 Q. First of all, what was that
20 document that Mr. Merritt was showing to
21 you?

22 A. Just a letter from Workers'
23 Compensation.

24 MS. ODESSKY: Mr. Merritt, is
25 this a document that's been provided to

37

1 WYNDER

2 us?

3 MR. MERRITT: This is a workers'
4 Compensation document. Truly isn't
5 relevant to this proceeding. It deals
6 with section 27 of the workers'
7 Compensation law. I thought there was a
8 reference to discipline in it and that's
9 why I thought it was responsive to your
10 question.

11 MS. ODESSKY: I'm going to mark
12 this as Defendants' Exhibit C.

94278

13 (Letter dated December 28, 1999
14 marked Defendants' Exhibit C for
15 identification.)

16 MR. MERRITT: Off the record.

17 (Discussion off the record.)

18 MS. ODESSKY: On the record, I
19 would not object, Mr. Merritt, to you
20 showing Mr. Wynder something to refresh
21 his recollection to correct the record as
22 to background information, but I will have
23 an objection if we get into substantive
24 matters regarding any of the incidents
25 that are contained in the complaint. I

38

1 WYNDER

2 will definitely have an objection to you
3 stopping and refreshing his recollection
4 and possibly providing answers that
5 Mr. Wynder doesn't recall.

6 So, I think we're not at that
7 point yet and I think we can proceed right
8 now.

9 BY MS. ODESSKY:

10 Q. For the record, I'm going to
11 show you, Mr. Wynder, what has been marked
12 as Defendants' Exhibit C. This is a
13 letter addressed to you from Linda A.
14 walker of the State of New York, Workers'
15 Compensation Board. It's dated December

94278

16 28, 1999.

17 I believe Mr. Merritt said that
18 he showed you this document because he
19 felt that it had something to do with my
20 question about disciplinary proceedings
21 against you.

22 I'm going to ask you to take a
23 look at this document and tell me if
24 there's anything in there that refreshes
25 your recollection regarding whether you

39

1 WYNDER

2 had been disciplined at any -- anyplace in
3 the New York State Police that you were
4 stationed?

5 A. No. It said Newburgh.

6 Q. It just makes a reference to
7 Newburgh?

8 A. Correct.

9 Q. Other than making a reference to
10 Newburgh, does it say anything else in
11 there regarding discipline?

12 A. No.

13 Q. Mr. Wynder, I would like to ask
14 you, Mr. Merritt has stated that sometimes
15 the medication that you are taking causes
16 you to have some difficulties with your
17 memory.

18 Is that your understanding?

94278

19 A. Sometimes, or if I'm stressed.

20 Q. Have you been treated for memory
21 loss?

22 A. It's not so much memory loss,
23 it's just at that point trying to -- we're
24 talking six, seven years ago. Actually,
25 back 13 or 14 years. I couldn't remember

□

40

1 WYNDER

2 when I graduated from high school.

3 Q. Have you been told by any
4 health-care professional that you have
5 some impairment to your memory?

6 A. When I get stressed, it could
7 bother me.

8 Q. Who has particularly --

9 A. Dr. Hugh Butts.

10 Q. Anyone else besides Dr. Butts
11 mention that?

12 A. That's all the psychiatric
13 treatment I receive.

14 MR. MERRITT: Let's take a short
15 break for a minute.

16 (Brief recess taken.)

17 MR. MERRITT: Miss Odessky,
18 Kenneth Wynder has a long history,
19 documented history, from 1998 forward, of
20 being treated for this illness,
21 post-traumatic stress syndrome.

94278

22 He has in the past, and even up
23 to the present time when needed, been
24 prescribed medication for that illness.
25 That medication is known and has been

41

1 WYNDER

2 known in the past to cause some memory
3 loss.

4 So I interrupted, I didn't mean
5 to interrupt you, but there were periods
6 of time when Mr. Wynder has had blanks in
7 his memory due to the post-traumatic
8 stress that he suffered and due to the
9 medication that he was taking which was
10 prescribed by his psychiatrist,
11 Dr. Butts.

12 So, in response to your
13 question, you had asked him if he had any
14 memory losses in the past and there were
15 periods of time in which he had been
16 taking medication, and some of the
17 questions you asked him with regard to
18 discipline, also, were periods of time in
19 which he had been suffering from
20 post-traumatic stress syndrome and had
21 been taking medication.

22 MS. ODESSKY: Okay. Thank you.

23 Mr. Merritt, I'm just going to
24 ask, and I will send you a letter to

94278

25 follow up, if you could provide me with

42

1 WYNDER

2 documentation regarding what you've just
3 said on the record, the medication and the
4 post-traumatic stress disorder causing
5 memory loss in the past.

6 So I will send you a letter to
7 follow up to that effect.

8 And I would just ask that once
9 we get into the substance of allegations,
10 I understand what you've just said on the
11 record, but I'll ask Mr. Wynder to just
12 answer to the best of his ability; and
13 he'll have an opportunity to review the
14 transcript once it's prepared, and if
15 there is something that he recalls that he
16 didn't recall today, certainly he'll be
17 free to fill that in. Okay?

18 MR. MERRITT: No problem.

19 BY MS. ODESSKY:

20 Q. Mr. Wynder, before we go on, I
21 just wanted to back up to something
22 regarding your education.

23 I know you mentioned that you
24 had the degree in criminal justice from
25 John Jay.

94278

43

1

WYNDER

2

Do you have any other schooling

3

beyond that?

4

A. No.

5

Q. Now, if we can just go back to

6

your time at SP Peekskill, I was asking

7

you regarding discipline and you mentioned

8

to me that a car was uninspected.

9

was that your personal car?

10

A. Yes.

11

Q. Is that a requirement, that you

12

keep your personal car inspected?

13

A. Correct.

14

Q. Other than that, as far as you

15

can recall, were there any other instances

16

of discipline or counseling while you were

17

at SP Peekskill?

18

A. No.

19

Q. When you left SP Peekskill in

20

'92, why did you leave there?

21

A. I went to State Police Albany to

22

be a basic counselor.

23

Q. Was that by your choice?

24

A. Yes, it was.

25

Q. Was that something that you had

□

44

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WYNDER

94278

2 to make an application for?

3 A. Correct.

4 Q. What did that application

5 process entail?

6 A. Memo to station commander.

7 Q. Installation commander?

8 A. Station commander.

9 Q. Sorry.

10 A. And then an interview with

11 troop.

12 Q. Did you have an interview?

13 A. Yes.

14 Q. Let me back up. Where was that

15 interview conducted?

16 A. Poughkeepsie.

17 Q. Who did you interview with?

18 A. I don't recall. I believe --

19 could have been Major Rabbit. I'm not

20 quite sure who was the major at the time,

21 but after the interview, I was highly

22 recommended for the position.

23 Q. What was the exact title of that

24 position?

25 A. Basic counselor.

45

1 WYNDER
2 Q. What were the duties of a basic
3 counselor?
4 A. To assist all new recruits in

94278
5 their adjustment to the Police Academy and
6 answer their questions and to be a
7 confidante to any problems that may exist.

8 Q. Did the duties of a basic
9 counselor entail teaching at the Academy?

10 A. No.

11 Q. Did you go to the Academy
12 directly from the Peekskill station?

13 A. Yes.

14 Q. Do you remember when you arrived
15 at the Academy?

16 A. I can't really recall. I think
17 it was '92 -- it was two classes that I
18 did. So the first one would have started,
19 I believe in September, if I'm correct, or
20 March. I don't remember the dates.
21 Actually, it was in March.

22 I was a basic counselor, but I
23 did offer to tutor minority recruits when
24 I realized that they were selected and
25 they were inferior to other recruits, and

1 WYNDER
2 I was turned down by my lieutenant to be a
3 tutor for them.

4 Q. when you say "they were inferior
5 to other recruits," what do you mean by
6 that?

7 A. Well, we have -- first two weeks

8 of the Academy class, there's a process
9 where they are given 10 words a day and
10 they have to define it and then they have
11 to write a paragraph -- not paragraph, but
12 a composition on why they want to be a
13 State trooper.

14 Having read most or all of the
15 Academy class, I realized that the
16 minorities were well behind in
17 comprehension and reading, and I
18 approached the lieutenant and told him
19 that they would never make it through the
20 basic school unless they received tutoring
21 now before they get into core classes.

22 Q. Can you tell me who the
23 lieutenant was that you approached?

24 A. I don't recall. I can't recall,
25 but he turned me down, and three weeks --

1 WYNDER
2 four weeks into the Academy he realized
3 that 95 percent of the minorities that was
4 in that class were failing, and he
5 approached me to come back and tutor the
6 recruits.

7 Q. Did you do that?

8 A. Yes, I did. I told him I was
9 only doing it because they were minorities
10 and not because he asked me.

94278
11 Q. Did you tutor the minority
12 recruits in one class year or two class
13 years?

14 A. One.

15 Q. Do you recall which year that
16 was?

17 A. That was the first year, in
18 March. I believe that was '92. March of
19 '92.

20 Q. Can you tell me, out of the
21 class, how many recruits were minorities?

22 A. I would say they may have made
23 up maybe 5 percent, if that was -- if that
24 was lucky.

25 Q. How large was the class in '92?

48

1 WYNDER

2 A. I don't recall. Could have been
3 120, 130. I don't recall the exact
4 number. I know there was probably 19 or
5 20 African Americans. I'm not saying
6 African Americans -- minorities, African
7 Americans and Hispanic that we had, and
8 out of those 20, we only lost two since I
9 tutored them.

10 Q. When you were at the Academy,
11 did you ever change your position from
12 counselor?

13 A. Correct.

14 94278
14 Q. When did you change your
15 position?

16 A. Well, I didn't change my
17 position. It was changed for me.

18 Q. How did that come about?

19 A. During that class, I already had
20 endeared myself to the lieutenant as far
21 as I was a troublemaker, because I stuck
22 up for minorities when I went to him, and
23 told him that these minorities were going
24 to fail if they didn't get the proper
25 help, and he replied to me, "You are a

49

1 WYNDER
2 basic counselor. It's not your job and
3 it's not my job to see that they get out
4 of this Academy. It's only our job to
5 make sure they get here."

6 Q. Do you recall, as you sit here
7 now, who that lieutenant was?

8 A. I can't remember his last name.
9 If the name was given to me, I would know
10 who it is. That's something that you
11 could look up for the basic school -- they
12 have everybody listed who was -- you know,
13 captain, lieutenant, colonel. Everything
14 is there. So that's something that's
15 easily accessible.

16 Q. During this time period, you

94278
17 said your position was changed for you.

18 Were you forced --

19 A. After I made that complaint that
20 the minorities weren't getting the proper
21 tutoring, the lieutenant came back to me
22 and asked me to do it, and I asked him,
23 quote, Is it because we're in penal law,
24 the first class and you are about to lose
25 most of minorities and you can't explain

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1 WYNDER

2 that to division? And he said, "Correct,"
3 and that's when I tutored them. But --

4 Q. Was that a change in your
5 position as counselor?

6 A. Yes. Because most basic
7 counselors did not tutor.

8 Q. Did you actually become a
9 different position or you were tutoring
10 them --

11 A. Well, no, I was still a basic
12 counselor, but I offered my time because I
13 wanted to help the minority recruits. I
14 became a tutor. Not an academic
15 instructor but a tutor.

16 Q. Did there come a time when you
17 actually did change from a basic counselor
18 to another actual position there?

19 A. Yes. Near the end of that

94278
20 Academy class, I was given a performance
21 evaluation and I was told that I only
22 received an excellent when every other
23 non-white instructor got an outstanding.
24 I also was told that my services
25 for the next Academy class would not be

51

1 WYNDER
2 needed due to the fact that I did not know
3 how to do carpentry and I did not run with
4 the recruits.
5 Q. When you say "run with the
6 recruits," physically run?
7 A. Physically run with the
8 recruits, which is not my job description
9 as a counselor. I did that when I was a
10 recruit.
11 Q. As far as your knowledge, did
12 anyone else at the an Academy, during the
13 entire time you were there, did they do
14 carpentry?
15 A. Yes, there was one trooper who
16 basically, I thought -- I thought State
17 Police brought him up there to fix the
18 building, because he never did his job
19 description.
20 Q. Who is that?
21 A. Trooper Caridi (phonetic), Bob
22 Caridi from Troop F.

23 Q. From Troop F?⁹⁴²⁷⁸
24 A. Yes.
25 Q. He was a trooper there that did

52

1 WYNDER
2 carpentry at the Academy?
3 A. Yes, he did.
4 And there was another trooper,
5 Peter Selles, s-e-l-l-e-s, I believe.
6 That might not be his name. If I saw his
7 name, I would remember him.
8 But he ran with the recruits
9 because he liked to run. And what the
10 instructors wanted to do, especially in
11 the PT, which is physical training, is
12 they wanted to sit around the table and
13 eat doughnuts and coffee when they should
14 have been running with the recruits.
15 So what they would do is ask the
16 counselors if you wanted to run with the
17 recruits, and I told them I wasn't going
18 to run with the recruits. It wasn't my
19 job to run with the recruits.
20 Q. Was there anyone else, any other
21 troopers that you knew of, who ran with
22 the recruits?
23 A. There was two others. I don't
24 remember their names, but they used to
25 pick them to run with the recruits, and

94278

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1 WYNDER
2 they became favorites of the lieutenants
3 because they were doing the job of -- the
4 physical training, so they had time off.
5 We would have a morning run and
6 the physical trainer is supposed to be out
7 there. They are in the cafeteria because
8 the counselors took them out for a run,
9 which was not their job description.
10 Q. Is Trooper Caridi, who you
11 mentioned, a member of a minority?
12 A. Nope, he's white.
13 Q. How about Trooper Selles?
14 A. All white.
15 Q. Any troopers who are members of
16 a minority who did either the carpentry or
17 running with the recruits?
18 A. No. They were all white.
19 Q. Do you recall the names of
20 anyone else? You said there were two
21 other troopers who ran with the recruits?
22 A. Not offhand. I would have to
23 look at the Academy class again.
24 Q. Anyone else who did the
25 carpentry that you recall?

54

94278

1 WYNDER

2 A. Trooper Caridi did most of the
3 carpentry. He had a construction company
4 and that's why I believe -- actually, I
5 don't believe, that's why they brought him
6 to the Academy, because he would walk
7 around in jeans and T-shirts all day and
8 fix the building. Any project that needed
9 to be done in that building, he did it.

10 Q. So there came a time when you
11 changed your position from basic counselor
12 to a different position within the
13 Academy?

14 A. Yes. After meeting with Captain
15 Masterson, who informed me of what I just
16 informed you, that I had nothing to offer
17 the next class because I didn't do
18 carpentry work or running work, and I told
19 him that was not my job description and I
20 refused to do it and that I will return to
21 the next class, in which he told me over
22 his dead body will I return to the next
23 class; and I told him that I was not an
24 indentured servant or a slave to the State
25 Police. I'm here to do a job as a

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1 WYNDER

2 trooper, but that's what he made me feel
3 like, and he said that if I don't do those

94278

4 things I have to leave.

5 Q. Did you leave the Academy?

6 A. No, I went back and I contacted
7 EEOC, affirmative action, within the New
8 York State Police.

9 Q. Who did you contact?

10 A. I don't remember his name.
11 Lieutenant --

12 MR. MERRITT: Lieutenant Cook?

13 THE WITNESS: Cook.

14 Q. What did you tell Lieutenant
15 Cook?

16 A. I told him that I believed that
17 I was being discriminated against and that
18 Captain Masterson threatened to have me
19 thrown out of the next Academy class and
20 he didn't want me back.

21 Q. Why did you believe that you
22 were being discriminated against?

23 A. Because everybody else who --
24 usually, when you go up to the basic
25 school, you do one year, which is two

□

56

1 WYNDER

2 classes, and all the other white members
3 were being allowed to come back except for
4 me.

5 Q. I don't know if I'm following
6 you.

94278

7 You say they were allowed to
8 come back?

9 A. Well, you do two basic schools.
10 So you would do -- we got there in March,
11 you would do the summer session, which
12 would be one Academy class, then you would
13 do the fall for that year. It's a
14 one-year period. Two classes. And all the
15 other counselors who arrived with me were
16 being allowed to stay except for me
17 because I refused to do, as I told
18 Lieutenant Cook, their slave work and I
19 wasn't going to be doing work -- job
20 performance that's not in my job
21 description nor that's expected of me.

22 Q. Were there any other counselors
23 who were not invited back for the second
24 class?

25 A. Everyone was invited back.

57

1 WYNDER

2 I also told Lieutenant Cook that
3 I was offended that they wanted to get me
4 out and also that there were no black
5 academic instructors.

6 Q. Of the counselors that were
7 invited back, were all of those counselors
8 white?

9 A. I believe every single one of

94278

10 them was white. There may have been one
11 other minority counselor, if I can recall.

12 Q. was that other minority
13 counselor, as far as you know, invited
14 back?

15 A. I think he got a promotion. I
16 believe he left. I don't recall if it was
17 that class or afterwards.

18 Q. Do you recall the name of that
19 officer?

20 A. No, I don't.

21 Q. Other than that one other
22 minority counselor, was there anyone else
23 who was not white?

24 A. Everybody else was white.

25 Q. Now, how did it work that you

58

1 WYNDER

2 went from a counselor to an academic
3 instructor? How did that process work?

4 A. well, after I spoke to
5 Lieutenant Cook, he advised me to write a
6 letter explaining in detail what Captain
7 Masterson said to me, what he did to me
8 and the conditions under which I felt I
9 was an indentured slave, and also to the
10 fact that why there is no minority
11 academic counselors -- I referred to them
12 as -- that's the only thing that we're

94278

13 good for is just for muscle because there
14 was no minority academic counselors, and I
15 was told that it wasn't their job, by
16 Captain Masterson, to bring any highly
17 recommended minority academic instructors
18 to Albany.

19 Q. To your knowledge, did any of
20 the other counselors who were invited back
21 who you say were all white, did any of
22 them refuse to do the tasks that you were
23 asked to do, the carpentry or the running
24 with the recruits?

25 A. I don't -- I can't recall if

59

1 WYNDER
2 they were asked or did they volunteer.
3 That would be a personal thing that I
4 wouldn't be privy to.
5 After writing the letter, I -- I
6 wrote the letter, I submitted it on a
7 Friday. When I returned Monday, I was
8 told that I would be returning to the next
9 class and that Captain Masterson was
10 overruled and that he was wrong, and I met
11 with Major Young who told me that my
12 findings and my observations were
13 absolutely correct, that they do need
14 minority academic instructors and that
15 they should bring academic instructors up

94278

16 and that Captain Masterson had no right to
17 do what he did and that he was being
18 overruled and I would be returning to the
19 class, and that they would handle my EEOC
20 internally so I wouldn't have to take it
21 outside. And at that point they told me
22 that they were forcing me -- if I wanted
23 to return, the only way I could return to
24 class was to be an academic instructor,
25 for which I had no training to be a

60

1 WYNDER

2 teacher.

3 Q. How did it, in general, not just
4 for you, but generally how did basic
5 counselors go from being a counselor to
6 being an academic instructor?

7 A. They didn't go from being a
8 basic to an academic.

9 when we arrived, they would
10 submit on their -- prior education, that
11 they've taught before, and when we got
12 there, they would place us. So they had
13 the requirements already.

14 Q. So when you come in, when you
15 first start at the Academy, you would be
16 placed as either a basic counselor or an
17 academic instructor?

18 A. Correct. And then you would go
Page 54

94278

19 through a certified instruction school to
20 get certified to teach, and then that
21 would be based on your past experience
22 with education and did you teach before,
23 which most of those guys, academic
24 instructors, did have prior teaching. So
25 they were -- they were able to handle it.

61

1 WYNDER

2 They had taught before.

3 Q. When you came back for the
4 second class and you said you were then
5 given the position of academic instructor,
6 did you ask to be given that position?

7 A. No.

8 Q. How did it come about?

9 A. I was forced to take it. If I
10 didn't become an an academic instructor, I
11 could not come back.

12 Q. Who told you that?

13 A. Major Young. And then that was
14 also reiterated to me by Captain
15 Masterson.

16 Q. What was your understanding of
17 why they were saying that you could only
18 come back as an academic instructor?

19 A. Because they wanted to set me up
20 in a position to fail. I told them that I
21 never taught before, why would you want me

94278

22 to teach or do something I wasn't
23 qualified for when the careers of young
24 kids rely on me teaching them, and they
25 said, "No, you complained about there not

62

1 WYNDER

2 being any black instructors, so you are
3 going to be one."

4 So to me it was a punishment. I
5 wanted to come back as a basic counselor,
6 not as an academic instructor, but I
7 was told if I didn't come back as as an
8 instructor, I couldn't come back.

9 Q. Did they say anything else to
10 you about why you were coming back as an
11 academic instructor other than that you
12 complained?

13 A. Because I complained.

14 Q. Any other reason?

15 A. I also told them that if they
16 didn't have an academic instructor, that I
17 would go outside and sue EEOC, because I
18 felt that minorities going through the
19 Academy should be able to look up and see
20 at least one black instructor in the
21 Academy.

22 Q. Prior to Major Young and Captain
23 Masterson telling you that you would
24 return as an academic instructor, you had

94278

25 told them that if you did not see any

63

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WYNDER

2

minorities as an academic instructor, you

3

would go outside the agency to sue?

4

A. Correct.

5

But they acknowledged it. They

6

acknowledged that I was right, that they

7

were being discriminatory and they weren't

8

bringing up black instructors to teach.

9

They were only bringing them up to do

10

push-ups.

11

Q. Did you ever express to them

12

interest in you, yourself, becoming an

13

academic instructor?

14

A. Never.

15

Q. Did you particularly tell anyone

16

at the Academy that you did not want to be

17

an academic instructor?

18

A. Lieutenant Cook.

19

Q. Why did you tell Lieutenant Cook

20

you did not want to be an academic

21

instructor?

22

A. Because I felt that I wasn't

23

prepared and I wasn't qualified for it.

24

Like I told you, before you come up

25

there -- I mean you are picked based on

94278

64

1 WYNDER
2 your prior experience. You know,
3 everybody who was a trooper didn't roll
4 out of bed and become a trooper; they had
5 a career before they got there. They used
6 people who had college degrees to be an
7 instructor, people who had taught, people
8 who had been in that capacity. I was
9 never in that capacity. Why would you put
10 me in that position?

11 Q. Did Lieutenant Cook ask you
12 whether you wanted to be an academic
13 instructor during your conversation with
14 him?

15 A. No.

16 Q. Did anyone at the Academy ask
17 you, did you want to be an instructor?

18 A. No, that was after I told them I
19 didn't want to do it. That's when he
20 asked me why not. And I told him I didn't
21 feel I was ready for it, but I took it
22 because I wanted to stay and finish out
23 the next class.

24 Q. During the time that you were
25 the academic instructor in the next class,

65

1 WYNDER

94278

2 what did you teach?

3 A. well, I had to be certified, so
4 that was a two-week intense course.

5 Q. Did you take that course?

6 A. Yes, I did.

7 Q. And then after that course was
8 completed, what did you teach?

9 A. After I passed that, I was
10 surprised to see that I was thrown a core
11 course. what I mean by "core course,"
12 there are certain courses that as a
13 recruit you could fail and still graduate
14 the Academy. I was given a course that
15 was, one, very difficult, vehicle and
16 Traffic Law, plus it was the first course
17 that the recruits would get, which means
18 if they failed in my class, they would not
19 move on.

20 Q. what was the subject matter of
21 that course?

22 A. vehicle and traffic.

23 Q. were there other courses there
24 that you believe were less complicated?

25 A. Of course. There were plenty.

66

1 WYNDER

2 There were courses that as a new
3 instructor I should not have been given.
4 That was for teachers who already taught.

94278
5 You're talking about a guy's career here.
6 You put a teacher who's never taught
7 before in front of a class, if these guys
8 don't grasp what I'm trying to tell them
9 and then they fail, they get kicked out of
10 the Academy.

11 I believe they gave me that
12 course because they wanted me to fail, and
13 actually the captain -- Captain Masterson
14 sat in my class which caused a lot of
15 stress. He sat in the back of the class.
16 That was the only class he sat in.

17 Q. Let me back up for a moment.
18 You said that they gave you that course.

19 Do you have an understanding of
20 whose decision it was to give you that
21 course?

22 A. Captain Masterson.

23 Q. why do you say that it was his
24 decision?

25 A. Because he was in charge of the

1 WYNDER
2 basic school.

3 Q. When you say that he wanted you
4 to fail, did you have an understanding of
5 why he wanted you to fail?

6 A. Yes, because he was embarrassed
7 of the fact that he had told everybody in

94278

8 the Academy, which is common knowledge,
9 that I would not return to that class over
10 his dead body, and when I wrote a letter
11 to EEOC and went over his head, he was
12 ordered by the Major that I had to come
13 back and he didn't like it, because he
14 told me that to my face, he said, "The
15 only reason why you here is because you
16 was ordered to stay here." He told me
17 that he would be watching me and watch
18 everything that I do, and if he could find
19 a way to get rid of me he would.

20 Q. Did he tell you that he gave you
21 the vehicle and traffic course because he
22 wanted you to fail?

23 A. No, he didn't tell me that, but
24 he -- he's the one who assigned the
25 courses.

68

WYNDER

1 why would you, again -- I
2 reiterate, why would you give someone
3 who's never taught in front of a mass of
4 people a course that you need to move on
5 in the Academy, as a first-time
6 instructor? That wasn't done. All the
7 instructors who taught the core courses
8 had experience. Okay. They had to teach
9 other things first before they taught core
10

94278
11 classes, except for me. I was thrown
12 right into a core class.

13 Q. Did you know of any other
14 academic instructor who was new to
15 teaching who was given the vehicle and
16 traffic course to teach?

17 A. Nope.

18 MR. MERRITT: Let me just
19 interrupt for a minute.

20 You had asked earlier of
21 Mr. Wynder if he had produced any of the
22 medications and any of the doctor's
23 records.

24 MS. ODESSKY: Yes.

25 MR. MERRITT: I just went into

1 WYNDER
2 the box that you gave me back, and Exhibit
3 18 has the doctor's records and the
4 medications and all those items that you
5 asked him if he had produced.

6 MS. ODESSKY: Thank you. I'll
7 take a look at that later.

8 Q. Did anyone else besides Captain
9 Masterson tell you that the reason Captain
10 Masterson assigned you to the vehicle and
11 traffic course was because he wanted you
12 to fail?

13 A. Yes, Lieutenant Cook and also --

94278

14 Q. I'm sorry, when did Lieutenant
15 Cook tell you that?

16 A. After I told him what course I
17 was teaching. Everybody was startled to
18 the fact that I was given a core class.

19 Q. When you say "everyone," who
20 else --

21 A. All the academic instructors.

22 Q. Do you know who? Can you give
23 me names?

24 A. I don't remember them. I know
25 one was Sergeant -- Trooper Kirk. That's

□

70

1 WYNDER

2 the only one I could remember offhand. And
3 Trooper Morse.

4 Q. You said that Captain Masterson
5 came and sat in the back of the class
6 while you were teaching the vehicle and
7 traffic course?

8 A. Correct. He sat there for
9 the -- for two days.

10 Q. Do you know whether or not
11 Captain Masterson sat in on any other --

12 A. I know for a fact that he did
13 not sit in on any other classes.

14 Q. How do you know that?

15 A. Because all the other academic
16 instructors informed me that he never sat

94278

17 in none of their classes, and the class
18 before that, when I was a basic counselor,
19 he didn't sit in any of those classes.
20 Q. How do you know that?
21 A. I was there for that class. I
22 was -- I used to go around and check up on
23 my recruits and I would go into the
24 classes. He never sat in their classes.
25 And after the second day of

71

1 WYNDER
2 sitting in my classes, Captain Masterson
3 requested that I be removed from my duties
4 as an academic instructor because I could
5 not cut it and I wasn't experienced enough
6 to teach the kids and he was getting
7 numerous complaints from the recruits that
8 I wasn't teaching right.
9 Q. Did he tell you that directly?
10 A. Yes, he did. And he also told
11 the other academic instructors.
12 Q. What were the complaints that he
13 was getting? Were you told about who was
14 complaining?
15 A. He never told me who. He just
16 said numerous recruits, that they couldn't
17 hear me. I wasn't speaking up. I wasn't
18 conveying the information, my knowledge of
19 information wasn't good and that he

20 recommended that I be removed.⁹⁴²⁷⁸ That was
21 common knowledge. He tried to have me
22 removed.

23 Q. Did you try to speak to any of
24 the recruits who you said were complaining
25 about you?

□

72

1 WYNDER

2 A. Well, the next class I asked,
3 was anybody having any problems, and they
4 said no.

5 Q. Any other complaints that you
6 were aware of that Captain Masterson said
7 were made against you?

8 A. Only that one, and also the fact
9 that -- one day we were in class and he
10 said something about blacks and minorities
11 making lawsuits, because I had EEOC'd
12 them. I had heard that.

13 Q. I'm sorry, Captain Masterson
14 said that?

15 A. Yes.

16 Q. Who did he say that to?

17 A. He said it to me, and he said it
18 in front of my class. This was during the
19 certification course, which he sat in on
20 that, too.

21 Ever since I became an academic
22 instructor, Captain Masterson started

23 following me. He already threatened me
24 that he was going to follow me and watch
25 me very carefully. Anything that I did

□

73

1 WYNDER
2 wrong he was going to have me thrown out
3 of the Academy, which he made obvious he
4 didn't want me there. You know, when you
5 say, "You're not coming back over my dead
6 body," that's pretty clear and that was
7 told in front of everybody.

8 Q. What was the comment that you
9 just mentioned, he said this -- you said
10 this was made during the two-week
11 certification course regarding blacks and
12 minorities?

13 A. Yeah. Well, I had did my
14 report -- you had to do a report at the
15 end of each class, and my final assignment
16 was you had to pick a topic and then you
17 had to show how you were going to do your
18 class for that. So mine was racism based
19 on perception versus reality, and he made
20 comments and jokes about that.

21 Q. What were the comments?

22 A. Oh, that I was wrong and that,
23 "why did you pick racism to do as your
24 final project? Are you trying to
25 insinuate that we're racist here?"

94278

74

1 WYNDER
2 Q. what did you say in response to
3 that?
4 A. "well, yes, you are."
5 Q. where did he make these
6 comments?
7 A. He made it inside the class and
8 he also made it in the hallway, which I
9 then informed Lieutenant Cook again, and I
10 also informed Lieutenant Cook that he
11 tried to have me kicked out of the class.
12 And after informing Lieutenant Cook,
13 Lieutenant Cook, on his behalf, I was told
14 that I could continue the vehicle and
15 traffic course.
16 Q. Let me back up for a moment.
17 when Captain Masterson made
18 these comments --
19 A. I went to Lieutenant Cook.
20 Q. -- he made them inside the
21 classroom.
22 were other individuals present
23 there?
24 A. Yes.
25 Q. who was present?

75

94278

1 WYNDER

2 A. I don't recall. There was about
3 12 people. 12 other recruits, and I know
4 one of them was Debra Campbell, she was
5 the counselor -- I mean she was the
6 instructor.

7 Q. I just want to be clear on what
8 you are saying. You said this was made
9 inside your classroom when you were
10 teaching a course to the recruits?

11 A. Yes, on why -- no, this was --
12 the comment on that was while I was --
13 after I had finished my presentation, I
14 had to do a final -- it was a final grade,
15 and he wanted to know why I picked that
16 subject.

17 He made a big -- he didn't yell
18 and scream, but he made his point to let
19 everybody know that he wanted to know why
20 I chose that as my topic.

21 Q. But this took place inside the
22 classroom?

23 A. Yes.

24 Q. You were teaching --

25 A. I had just finished -- I had

76

1 WYNDER

2 finished my final grade. I wasn't -- it
3 was a presentation. This was my

94278

4 presentation. This was other troopers.
5 We were all being certified to be --

6 Q. This is part of the two-week
7 certification course?

8 A. Right.

9 Q. Before you started teaching the
10 vehicle and traffic?

11 A. Right.

12 Q. I just wanted to clarify that.
13 So the people that would actually be in
14 that class were either the instructor or
15 other people getting certified to be
16 academic instructors?

17 A. Correct.

18 Q. So one of those individuals, you
19 said, was Debra Campbell?

20 A. She was an instructor.

21 Q. She was instructing actually the
22 certification course?

23 A. Yes, she was.

24 Q. Was there anyone else there who
25 would have overheard the comments?

□

77

1 WYNDER

2 A. I wouldn't recall right now. I
3 know there was other people but I can't
4 recall.

5 Q. Other than asking you why did
6 you pick racism as the topic for your

94278

7 project, was there anything else that
8 Captain Masterson said that you could
9 recall?

10 A. Again, he just reiterated that
11 he would be watching me. He made it very
12 known that he didn't like me, so....

13 Q. How did he make it known that he
14 didn't like you?

15 A. Well, he told everybody I
16 wouldn't return to the next class over his
17 dead body, and that I had no -- nothing to
18 offer the Academy class and that I was
19 lazy and I was -- and that I spoke back to
20 him, but not in an insubordinate way, but
21 he didn't like it that I didn't go along
22 with the program.

23 That's what he told me. I'm not
24 the kind of trooper that goes along with
25 the program.

78

1 WYNDER

2 Q. what did he mean by that, "goes
3 along with the program," as far as you
4 understood?

5 A. Basically be their indentured
6 slave. Do what they say. That's the
7 State Police motto, "If you don't what we
8 say, we won't like you." He wanted me to
9 run with the recruits. He wanted me to do

94278

10 carpentry. He wanted me to make errands.

11 He wanted me to wash his car.

12 when you told that captain that
13 you didn't want to do these things, he
14 didn't like you. I guess he thought our
15 job was for personal needs as a basic
16 counselor in that Academy class. Most of
17 the guys did the basic needing and bidding
18 for the captain up there.

19 Q. Were other individuals that were
20 up there as counselors or instructors, did
21 they do errands?

22 A. Oh, yes, they did. They went
23 along with the program.

24 Q. What kind of errands did they
25 do?

□

79

1 WYNDER

2 A. "Go wash my car, go pick up
3 this, go drop off this." I mean this was
4 a norm. "Can you fix that mirror? Can
5 you hammer this? Can you carry this? "
6 That was basic. You got up in the morning
7 and you had errands to do.

8 Q. Who was asking for these errands
9 to be done?

10 A. A lot of it was Captain
11 Masterson. He would call you into the
12 office and tell you, "Go wash my car down

94278

13 the block. we have an account there" --
14 basically it was Captain Masterson. The
15 lieutenant sometimes would tell us -- when
16 I remember his name.

17 Q. The other individuals who were
18 doing these errands, were they minorities?

19 A. No, they were white, and that's
20 what Masterson meant by I wouldn't go
21 along with the program. I wouldn't do
22 everything that they asked me to do.

23 He also brought up the fact that
24 when I got there I was overweight.

25 Q. What did he say about that?

80

1 WYNDER

2 A. He told me I was overweight and
3 I replied to him that not only was I
4 overweight, I worked out and I got down to
5 my weight, and I told him that, "You are
6 also on the overweight program and you
7 have yet to get down to weight."

8 So I said, "I've conformed to
9 everything that was expected of me here in
10 this Academy, except that I'm not going to
11 do your personal bidding and I'm not here
12 to work for the State Police in anything
13 other than the capacity I was brought here
14 to do which is to be a basic counselor,
15 tend to my recruits and their needs and

94278

16 make sure they graduate." I was not an
17 indentured servant, which I went above and
18 beyond. I became -- I obligated myself to
19 be a tutor, which I didn't have to, and I
20 did that for the purposes of helping the
21 minorities graduate, because at the time
22 the State Police was supposed to have had
23 a minority federal lawsuit against them.

24 They said they had to bring in a
25 certain amount of minorities. But that

81

1

WYNDER

2 lawsuit only states that they have to
3 bring them in, they don't have to graduate
4 them, which I don't understand. If you
5 bring in a certain amount of minorities,
6 you should make it your business to have
7 them graduated. But I was told that that
8 wasn't their problem. Their only problem
9 was to bring them to the Academy, and if
10 they couldn't make it through academic, so
11 be it, they failed, they kick them out.

12 Q. Let me go back for a moment to
13 Captain Masterson.

14 You said that he said in front
15 of everyone that you wouldn't be returning
16 over his dead body, correct?

17 A. Yes.

18 Q. When you say "everyone," who do
Page 73

94278

19 you mean? Do you mean other counselors,
20 other instructors?

21 A. Lieutenants, other colonels.
22 Anybody in the building, he was bragging
23 that I was leaving. We also had --

24 Q. Can you remember the name of any
25 particular individual?

□

82

1 WYNDER

2 A. Lieutenant Cook, all the basic
3 instructors. The other lieutenant.
4 People in the cafeteria, because they
5 teased him, you know, they would tell him
6 that, "I guess you're dead, Captain,
7 because he's back."

8 So he hated me. He tried to
9 make my -- which he did. He made my last
10 six months at the an Academy so hostile
11 that I couldn't even do my job there, and
12 I tried and --

13 Q. When you say you couldn't do
14 your job, what do you mean?

15 A. I was stressed. He was sitting
16 in my class. He tried to get me thrown
17 out of my class. He was watching me.
18 Everything that I did, Captain Masterson
19 was watching.

20 Q. How do you know that he was
21 watching?

94278

22 A. From what he told me, he sat in
23 my class. The lieutenant would tell me
24 that he saw me doing this, he saw me going
25 here.

83

1 WYNDER

2 Q. What kind of things was he
3 seeing you do?

4 A. I left the building. "Why did
5 you leave?" I had reasons, I always had
6 reasons, but he wanted to know.

7 Q. What other kinds of things --

8 A. Anything I did. Any movements
9 that I made in there. "Why was you in the
10 waiting room? You should have been
11 here." When I told him, no, I was on my
12 lunch. Anything he could find to bring me
13 up on charges, he tried.

14 Q. Did you actually get written up
15 on charges while you were at the Academy?

16 A. No.

17 Q. How did it come about that you
18 left the Academy?

19 A. Well, I was supposed to have
20 been -- I was supposed to have been
21 promoted during my time in the Academy.
22 It was known that when you go to Albany,
23 you get promoted to investigation. And I
24 was promised to be promoted.

94278

25 Q. Who promised you that?

84

1 WYNDER

2 A. Well, actually, before I went to
3 the Academy, I had my interview to go to
4 the BCI, which is the Bureau of Criminal
5 Investigation.

6 Q. Who did you have that interview
7 with?

8 A. Captain Burns, B-u-r-n-s.

9 Q. That took place prior to you
10 going to the Academy?

11 A. Yes, that took place, and that
12 is another reason -- I took that -- that
13 was done at SP Poughkeepsie at the time,
14 which I went to Poughkeepsie and I had to
15 be interviewed by one Captain Burns. I
16 got there early.

17 At the time I interviewed, I was
18 told to go in, I went in, Captain Burns
19 was on the phone, and he told me to stand
20 at attention and he would be with me
21 shortly. He then proceeded to stay on the
22 phone for a good 20 minutes while I stood
23 at attention in front of a mural painting
24 of the civil war with the victorious
25 troops holding a Confederate flag.

94278

85

1 WYNDER

2 Q. Was anyone else present in the
3 room at this time?

4 A. No, it was me. And I felt very
5 offended to the fact that I'm in a State
6 Police facility and here is hanging a
7 picture of the Civil war with the
8 Confederate flag waving, which to me
9 showed that they believe the Civil war
10 should have been won by the Confederate
11 people, and I felt very bad about the fact
12 that I thought this country had come a
13 long way from the Civil war. I was
14 appalled.

15 Q. Did you have the interview with
16 Captain Burns?

17 A. Yes. 20 minutes after standing
18 in front of this picture. He proceeded to
19 interview me and demean all my
20 accomplishments at SP Peekskill.

21 Q. How did he demean your
22 accomplishments?

23 A. "Oh, you had all these arrests,
24 DWIs, but they weren't -- how did you do
25 this? Did you really do all this felony

86

1 WYNDER

94278
2 work?" It's like he didn't believe me, and
3 the interview did not go well. Even
4 though I reiterated to him that I was
5 always in the top three in activity in my
6 class. I had excellent and outstanding
7 evaluations.

8 Q. Did he say anything else to you
9 during the interview?

10 A. He just told me that, you know,
11 he would let me know, but under his
12 recommendation he didn't believe I was fit
13 to be in the BCI. I didn't show enough
14 promise.

15 Q. Did he say that directly to you?

16 A. Yes, he did.

17 Q. Was anyone else present during
18 this time?

19 A. No.

20 And after I left there, I went
21 directly to my station commander, told him
22 how the interview went and my station
23 commander, out of his own words stated
24 that, "That racist red neck bastard."

25 Q. And that was --

87

1 WYNDER

2 A. Sergeant Robert Welsh.

3 Q. What did you do after that?

4 A. Well, Sergeant Robert Welsh said

94278
5 he wasn't going to stand for that. He
6 called Albany and Colonel Tagget
7 (phonetic), which is the confidante,
8 assistant, to the superintendent was told
9 of what happened, and that Colonel Tagget
10 would look into it.

11 Q. Did you put anything in writing
12 regarding that?

13 A. No.

14 Q. What was the results, if any --

15 A. When I got to the basic school
16 as a counselor, which was only like three
17 weeks later, I was pulled aside by Colonel
18 Tagget who informed me that that picture
19 was removed from the wall and that the
20 State Police would not tolerate that kind
21 of behavior or implications, that they
22 believe in the Confederate flag.

23 Q. Did you do anything further with
24 regard to that interview with Captain
25 Burns?

88

1 WYNDER

2 A. I asked for another interview,
3 but I wasn't given one.

4 Q. So would it be fair to say that
5 your first choice when you were at SP
6 Peekskill was to go to the BCI rather than
7 to the Academy?

94278

8 A. No, you always wanted to go get
9 promoted to the BCI. I didn't mind going
10 to the Academy. It was the norm. You do
11 a year for the job, you walk the carpet,
12 you do the road work and then you get
13 promoted. That was a norm.

14 Q. So it was your understanding
15 that if you went to --

16 MR. MERRITT: Let me interrupt
17 for a second.

18 I wish to object to the first
19 question that you asked because it was out
20 of sequence.

21 His testimony was that after
22 going to the Academy and achieving the
23 rank of instructor, the next normal
24 promotion would have been to BCI. The way
25 you worded the question was would you

□

89

1 WYNDER
2 rather have gone to the Academy or to BCI,
3 and I think from his answer, previous
4 answer, the question was confusing.

5 MS. ODESSKY: I'll rephrase it,
6 and I'd ask Mr. Merritt to please keep the
7 speaking objections to a limit, but I'll
8 rephrase the question.

9 BY MS. ODESSKY:

10 Q. At the time, Mr. Wynder, that

94278

11 you were at SP Peekskill, your goal from
12 SP Peekskill was to go into BCI; would
13 that be fair to say?

14 A. Correct.

15 Q. But you went to the Academy and
16 it was your understanding that when you
17 spent two years in the Academy, that the
18 next step for you would be going from
19 there to the BCI; is that fair to say?

20 A. Yes, the two classes. That was
21 like, you know -- you go to the Academy,
22 you do something for us, we also do
23 something for you. I was qualified.

24 My sergeant put in the papers
25 that I should have been in the bureau,

90

1 WYNDER

2 which is the BCI.

3 Q. When you say that was your
4 understanding, what do you base that on?
5 Is that something --

6 A. Presence of other troopers that
7 have been sent to the Academy. They left
8 the Academy. Numerous troopers, almost 80
9 percent of the troopers who go who are on
10 the list for BCI, leave the Academy and go
11 to the bureau.

12 Q. Where do you get that statistic
13 from, 80 percent?

94278
14 A. well, I can only go by my first
15 four years on the job. Most of the guys
16 out of my station, when they went to the
17 Academy, you got promoted.

18 Q. Did you know of any troopers who
19 spent two years at the Academy --

20 A. Two classes. Some didn't even
21 spend that much. Some was only six months
22 and then get promoted from there. I can't
23 recall the names.

24 Q. Regardless of their names, were
25 you aware of any troopers who left the

91

1 WYNDER

2 Academy and did not go to BCI?

3 A. There was some but they might

4 not have been on the list. A lot of

5 people didn't want to go to Albany. You

6 are leaving your station to go all the way

7 up to Albany to be surrounded by nothing

8 but captains, colonels and the

9 superintendent. So a lot of them didn't

10 want to go there. Basically they had to

11 entice you to get troopers to go up

12 there. So it was troopers who wanted to

13 study for the sergeant's test while they

14 were up there or get promoted to the BCI.

15 Q. I'm asking you, were you aware
16 of any troopers who did go to the Academy

94278

17 for some period of time, two years or a
18 less period of time, that did not end up
19 getting the promotion to BCI?

20 A. I wouldn't say did they get it
21 or not. I don't know if they requested
22 it. You have to request it. You can go
23 to Albany and come back, if you didn't put
24 in for the BCI, you're not going to get
25 promoted so I wouldn't know -- I couldn't

92

1 WYNDER

2 tell you -- I just know I -- I physically
3 saw troopers who went to the Academy get
4 promoted to the BCI. A lot of them got
5 promoted from Albany.

6 Q. Do you know of anyone who had
7 put in, applied to go to BCI from the
8 Academy but was not permitted to do that?

9 A. The ones in my station went.

10 Q. When you say the ones in your
11 station --

12 A. SP Peekskill.

13 Q. So you are saying that everyone
14 from SP Peekskill who went up to the
15 Academy then went onto BCI?

16 A. Yes. As a matter of fact, I
17 could state on the record that when I got
18 to Peekskill in 1987, every trooper in
19 front of me was promoted to the BCI and

94278
20 almost every trooper below me who came in
21 after me was promoted to the BCI.
22 Q. When you say came in after you,
23 how many years are you talking about after
24 you?
25 A. A year, two years, had less

93

1 WYNDER
2 seniority than me, got promoted before I
3 did.
4 Q. Just so I'm clear, everyone that
5 you started with in SP Peekskill, as far
6 as you know, was promoted to BCI?
7 A. Yes. I can give you the names.
8 Q. Okay.
9 A. Trooper Dwyer, Trooper McKenzie,
10 Trooper Swanson, Trooper Pagan, Trooper
11 Brobola, B-r-o-b-o-l-a.
12 Q. Anyone else?
13 A. Trooper Dexter, Trooper Senik,
14 S-e-n-i-k.
15 Q. Anyone else?
16 A. Trooper Meybaum, M-e-y-b-a-u-m.
17 Q. Anyone else?
18 A. Trooper Titus, T-i-t-u-s;
19 Trooper Mergian, M-e-r-g-i-a-n; Trooper
20 Jules Renner.
21 Q. Anyone else?
22 A. Let me see. Those are the ones

23 I can recall. They all⁹⁴²⁷⁸ requested it and
24 they all got it. Peekskill was a
25 favorite -- in our troop, number 1 in.

□

94

1 WYNDER
2 activities, and basically everybody got
3 promoted out of their station except me.
4 After that, half of that list were on
5 before me, the other half came in after
6 me.
7 Q. Of any of the troopers you
8 mentioned, are any of them minorities?
9 A. Yeah.
10 Q. Who would that be?
11 A. Jules Renner is a minority.
12 Trooper Titus is a minority.
13 Q. Anyone else?
14 A. That was it. Everybody else was
15 white.
16 Q. Now, from the Academy, where did
17 you go when you finished there?
18 A. Back to SP Peekskill.
19 Q. Whose decision was it for you to
20 go back to SP Peekskill?
21 A. My two academic classes were
22 over and I wasn't invited back to the
23 Academy, nor did I want to stay there
24 because I was so harassed by Captain
25 Masterson that I could no longer do my

94278

95

1 WYNDER
2 duties there as a counselor or as an
3 instructor.
4 Q. Was it a possibility for you to
5 have stayed more than two years?
6 A. Yeah.
7 Q. Had you wanted to?
8 A. Yeah. Some of the other
9 counselors did stay another class. You
10 put in for it.
11 Q. Was it your understanding that
12 had you specifically asked to stay at the
13 Academy you could have?
14 A. I was told I was not being
15 invited back to the next class nor would I
16 ever be called back to the class to teach.
17 Q. Did you ask anyone whether you
18 could be invited back?
19 A. Of course. I wanted to continue
20 to teach. You have courses where troopers
21 come off the road and they come back just
22 to teach that two weeks, just to teach
23 those classes. You don't stay but you
24 come in to teach a specific area.
25 Q. Who did you ask whether you

96

94278

1 WYNDER

2 could continue to teach?

3 A. Captain Masterson. And he told
4 me he would not call me back.

5 Q. Did he tell you why?

6 A. Of course. He didn't like me.
7 He told me he didn't want me there. As
8 long as he was there, if he could help it,
9 I would never be there.

10 Q. Did you talk to anyone else
11 about coming back to teach?

12 A. Lieutenant Cook.

13 Q. What did Lieutenant Cook tell
14 you when you asked him if you could come
15 back to teach?

16 A. He said that I have that right
17 as a -- if the State Police just paid -- I
18 mean the course is a two-week intense
19 course, college credits. I was certified
20 to teach. I could go teach anywhere. Why
21 wouldn't the State Police want to exercise
22 the commitments that they gave to me to
23 come back and teach. He said, "We'll make
24 sure that you'll get called back." But
25 until my retirement I was never called

97

1 WYNDER

2 back.

3 Q. Other than speaking to Captain
Page 87

94278

4 Masterson or Lieutenant Cook about this,
5 did you ask anyone else whether you could
6 come back?

7 A. Yes. My station commander,
8 Sergeant Robert Welsh.

9 Q. Anyone else?

10 A. That was it.

11 Q. Now, you went back to SP
12 Peekskill and that was about 1994?

13 A. '93.

14 Q. When you went back there, what
15 were your duties?

16 A. A trooper again. That was after
17 I had been promised to be promoted, and
18 then when the list came out, I was told
19 that I would not be promoted.

20 Q. What were you promised to be
21 promoted to, what rank?

22 A. Investigator.

23 Q. Did that require you taking a
24 test?

25 A. No. That's appointed. I had

□

98

1 WYNDER
2 already spoken to -- down here in the
3 city, which would be the DETF.

4 Q. Who did you speak to there?

5 A. Lieutenant -- it was a black
6 lieutenant and he called me, actually.

94278

7 Q. How did that come about that he
8 called you?

9 A. Well, he had been informed that
10 I was going to be promoted and he wanted
11 to talk to me and see if I was welcome to
12 down here.

13 Q. Who informed him that you were
14 going to be promoted?

15 A. He just said he had got a call
16 from Captain Masterson.

17 Q. Captain Masterson told him that
18 you were going to be promoted?

19 A. That he was told that I was
20 going to be promoted. Captain Masterson
21 also told me, "Congratulations."

22 Q. When did he tell you
23 congratulations? Were you still at the
24 Academy at that time?

25 A. Of course. Right before the

□

99

1 WYNDER

2 list came out.

3 Q. That was prior to you leaving
4 the Academy?

5 A. Correct.

6 Q. Was that in your second year at
7 the Academy?

8 A. Second class, yes.

9 Q. How did that come about? What
Page 89

94278

10 did Captain Masterson say to you?

11 A. Well, he didn't say actually

12 "congratulations." He just told me that

13 he has to look for another instructor to

14 finish up because I would be leaving

15 because I was -- he was told that I would

16 be promoted.

17 Q. Who told him that, as far as you

18 know?

19 A. He said troop. That's where it

20 would come from, I assume.

21 Q. What happened after that?

22 A. Well, the list came out and my

23 name wasn't on it.

24 Q. What was your understanding of

25 how that happened?

□

100

1 WYNDER

2 A. The list came out, I looked on

3 it, my name wasn't on it. I asked why,

4 and they told me that they wanted to pick

5 from another troop instead of Troop K.

6 Q. Troop K is Peekskill?

7 A. Troop K is Westchester.

8 Q. So when the list came out, would

9 it be fair to say that all the troopers

10 that -- and they were on the list of

11 people you gave who were promoted, their

12 names were on that list and yours was not?

94278

13 A. They didn't all go on that list
14 but they all got promoted but some of them
15 that was on there --

16 Q. So there were troopers from
17 Peekskill?

18 A. That got promoted. Well, Troop
19 K. You have to fill slots. There's a
20 certain amount of numbers that come from
21 Troop K, Troop B, throughout the State,
22 and that's how they form a list.

23 Q. Did you have an understanding of
24 who was responsible for your name not
25 being on that list?

101

1 WYNDER

2 A. I was told that Captain
3 Masterson had something to do with it
4 because he had spoke to me prior to that,
5 and after the list came out, he never
6 spoke to me again.

7 Q. When you say he spoke to you
8 before --

9 A. Like he would speak and after
10 that he would -- he never spoke to me
11 again.

12 Q. When you say you were told that
13 he had something to do with it, who told
14 you that?

15 A. Other troopers, even my

94278

16 sergeant, Robert Welsh told me.

17 Q. What did Sergeant Welsh say to
18 you about that?

19 A. Well, he said that I messed up.
20 I went up to Albany and I ruffled some
21 feathers and that I wasn't going to get
22 promoted to investigator ever.

23 Q. What else did he say about --

24 A. He said if you want to move on,
25 you would have to take the sergeant's

□

102

1 WYNDER

2 test, because you're not going to get
3 promoted.

4 Q. Did he explain what he meant by
5 saying you messed up?

6 A. Oh, yeah. I had accused the
7 State Police of being discriminatory,
8 racist.

9 Q. Anything else?

10 A. No, that's what he told me. He
11 said, "You went up and instead of going
12 along with the program" -- I made a name
13 for myself in the wrong way. And that I
14 EEOC'd them. State Police don't take
15 kindly to anybody who shows any kind of
16 resistance to their practices and
17 procedures.

18 Q. When you went back to SP

94278

19 Peekskill, how long did you stay as a
20 trooper once you returned from the
21 Academy?

22 A. Six months and then I
23 transferred to Hawthorne.

24 Q. why did you transfer to
25 Hawthorne?

□

103

1 WYNDER

2 A. Highway patrol.

3 Q. Was that your choice?

4 A. Yes, I put in for it.

5 Q. why did you put in for that?

6 A. I wanted a change.

7 Q. When you say you wanted a
8 change, why did you want a change?

9 A. Highway. No complaints.

10 Q. You mean --

11 A. SP Peekskill does everything
12 regular police officers do. SP Hawthorne
13 is strictly highway. So you write
14 tickets, accidents.

15 Q. So you didn't want to have to
16 respond to individual --

17 A. I just wanted a change. I had
18 been doing it for five years, six years.
19 You know the town, you know the same
20 people. I just got tired.

21 Q. When you transferred to the
Page 93

94278

22 Hawthorne highway patrol, what was your
23 position there?

24 A. Still a trooper.

25 Q. What did your duties consist of?

□

104

1 WYNDER

2 A. Writing speeding tickets.

3 Q. Who is your commander there?

4 A. Captain Spahl. Well, at first
5 it was Captain O'Donnell.

6 Q. How long were you with
7 Hawthorne?

8 A. I was there until I retired on
9 disability.

10 MS. ODESSKY: Off the record.

11 (Discussion off the record.)

12 (Luncheon recess: 1:25 p.m.)

13

14

15

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21

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23

24

94278

25

105

1

WYNDER

2

A F T E R N O O N S E S S I O N

3

(2:05 p.m.)

4

K E N N E T H N. W Y N D E R, having
5 been duly sworn was examined and testified
6 as follows:

7

CONTINUED EXAMINATION

8

BY MS. ODESSKY:

9

Q. Mr. Wynder, before we broke for
10 lunch, we were talking about your having
11 gone back to SP Peekskill after you left
12 the Academy.

13

A. Correct.

14

Q. You said that your troop
15 commander was first Captain O'Donnell and
16 then Captain Spahl?

17

A. Correct. As I can recall, yes.

18

Q. And you stayed at SP Peekskill
19 until your retirement --

20

A. No, SP Hawthorne, until I
21 retired.

22

Q. Sorry, SP Hawthorne, until you
23 retired.

24

Now, while you were at SP
25 Hawthorne, did you have occasion to be

94278

106

1 WYNDER

2 disciplined?

3 A. Yes.

4 Q. what was that discipline for?

5 A. The first discipline was an

6 off-duty incident that happened in SP

7 Newburgh -- just Newburgh.

8 Q. In the Town of Newburgh?

9 A. Town of Newburgh. City of
10 Newburgh.

11 Q. When did that incident occur,
12 approximately?

13 A. Approximately '96. '95, '96.

14 Q. Would it be fair to say that you
15 were at Hawthorne for about two to three
16 years at that point?

17 A. I would say about that, yeah.

18 Q. What was the incident that
19 happened in the City of Newburgh?

20 A. I was dropping off a friend at
21 his house and it was me, my friend and
22 another individual, all black males.

23 Q. Can you tell me their names?

24 A. One was Chris Scudder,
25 s-c-u-d-d-e-r.

107

1 WYNDER

94278
2 Q. Do you recall anyone else?
3 A. Yes, but I don't quite remember
4 his name. At that time he was an
5 associate. We were just dropping him off.
6 Q. So you were in a car?
7 A. Correct.
8 Q. You were driving?
9 A. Yeah, I was driving.
10 Q. So Chris Scudder and another
11 individual were in the car with you?
12 A. Yes.
13 Q. Anyone else in the car?
14 A. No.
15 Q. What happened?
16 A. We pulled up to let him out.
17 Q. Who were you letting out?
18 A. The individual, not Chris
19 Scudder.
20 Q. What happened then?
21 A. There was an arrest in progress
22 by the City of Newburgh police.
23 Q. Who was being arrested?
24 A. A male subject.
25 Q. Did you know who that person

□

108

1 WYNDER
2 was?
3 A. No.
4 Q. It was not someone known to you?

94278

5 A. No.

6 Q. Did you see the officers were in
7 uniform?

8 A. Correct.

9 Q. And you recognized their uniform
10 as being the City of Newburgh?

11 A. Yes.

12 Q. Do you know who the officers
13 were?

14 A. No.

15 Q. Did you know them at the time?

16 A. No.

17 Q. What time of the day was this?

18 A. This was approximately about --
19 it was nighttime. I know that. In the
20 later evening. I believe after 9:00. I
21 don't -- not really sure. But we pulled
22 up, again, as I said, we waited until the
23 cops made their arrest. We didn't want to
24 interfere in their arrest.

25 Q. Now, when you say you pulled up,

109

1 WYNDER

2 where was the arrest taking place?

3 A. Well, we pulled up on the
4 street, on the left-hand side. His
5 apartment was right there, and
6 approximately 50 to 100 feet, 200 feet up
7 maybe, City of Newburgh was effecting an

94278

8 arrest, which was the guy was resisting
9 and they finally got him down to the
10 ground and arrested him. I told everybody
11 in the car to stay in the car, let's not
12 get in their way, so they won't have any
13 problems.

14 Q. How many officers from the City
15 of Newburgh were there?

16 A. There were at least two other
17 cars sitting there. There was a crowd of
18 people.

19 Q. Could you tell me how many
20 officers there were?

21 A. Maybe about -- officers? That I
22 could see right offhand, at least four or
23 five. There was a crowd of about 10 or 20
24 that was following the incident.

25 Q. Was the person white or black,

□

110

1 WYNDER

2 Hispanic?

3 A. I believe he was a white man.

4 Q. So you said the person --

5 A. I believe. I'm sorry, I
6 believe. I --

7 Q. Not certain?

8 A. Can't recall if he was white or
9 black.

10 Q. You said the person was

94278
11 resisting arrest but eventually the police
12 were able to get him down to the ground?
13 A. Correct.
14 Q. Was there any other individual
15 involved besides the person who was being
16 arrested?
17 A. Not that I know of.
18 Q. When you say the person was
19 resisting, what did you see them doing?
20 A. Throwing him to the ground.
21 Q. That's what you saw the police
22 doing?
23 A. Yes, they forced him down and
24 then they effectively arrested him.
25 Q. When you say that that

□

111

1 WYNDER
2 individual being arrested was resisting,
3 what did you see that individual doing
4 prior to being thrown to the ground?
5 A. He was running from them.
6 Q. Would you say he was running
7 quickly?
8 A. I don't know. I just know they
9 were in pursuit of him.
10 Q. Was this a long pursuit? Did
11 they have to run after him a full block?
12 A. That I wouldn't know. When I
13 pulled up, they had just surrounded him

14 and then they grabbed him. 94278

15 Q. So did you actually see the

16 individual running at the time you pulled

17 up?

18 A. Just for a little bit and then

19 another police officer stopped his path

20 from going another way and then they

21 surrounded him.

22 Q. And then what happened after

23 they surrounded him and got him down to

24 the ground?

25 A. They handcuffed him and they

112

1 WYNDER

2 took him off.

3 Q. what did you do next?

4 A. At that point I said to my --

5 Chris Scudder and my other associate, I

6 told them, "Okay, let's get out and walk

7 him to the door so we can go home." You

8 know, and they said okay. We got out of

9 the car, at which point we were approached

10 by the City of Newburgh police.

11 Q. When they approached you, how

12 many officers approached you?

13 A. Two.

14 Q. what did they say?

15 A. well, they started questioning

16 us, asking us who are you and what are you

94278
17 doing here, and at that point I told the
18 police officer that "I was dropping my
19 friend off and we just pulled up and we
20 waited for ya'all to make your arrest, we
21 didn't want to get in your way and we were
22 going about our business."

23 Q. What did they respond to you?

24 A. They wanted to see ID and they
25 wanted to check my car. At which time I

□

113

1 WYNDER
2 told them that my civil rights -- I said,
3 "I don't have to allow you to do that."
4 I said, "I haven't done anything." And
5 then I said, "Officer, am I suspect?" He
6 said, "I didn't ask you all of that." I
7 said, "I'm going to ask you again,
8 Officer, am I a suspect?"

9 Q. You identified yourself as a
10 State trooper at that point?

11 A. No.

12 Q. Why not?

13 A. Because I didn't feel I had to
14 identify myself as a trooper in order for
15 a police officer to respect my rights.

16 Q. Did the officers give you any
17 idea of why they wanted to see your ID?

18 A. No. I kept asking, "why do you
19 want to see my ID?" And they said, "Don't

94278
20 you know" -- "Didn't you just see we
21 arrested somebody?" I said, "Yes, and
22 that had nothing to do with me and my
23 friends. Is there a problem?"
24 And then they used a term that
25 is used to almost every suspect in the

114

1 WYNDER
2 street. "You look like somebody we were
3 looking for."
4 Q. Who said that to you?
5 A. The police officer.
6 Q. Do you know which officer said
7 that?
8 A. I don't recall.
9 Q. What did you say in response?
10 A. I said, "Really?" I said, "Who
11 told you that we look like who you are
12 looking for?" I said, "Who are you
13 looking for? If I look like somebody,
14 then you should have a name." He refused
15 to give me a name.
16 Q. Did only one officer speak to
17 you or did other officers speak to you?
18 A. One was speaking and the other
19 one was looking around in my car with his
20 flashlight and looking and everything.
21 Q. Had you given them permission to
22 look in my car?

94278
23 A. I told them no, they didn't have
24 permission to look in my car.
25 Q. They were looking in your car

115

1 WYNDER

2 without permission?

3 A. Correct.

4 Q. How did they get into the car?

5 A. Well, they opened up the doors

6 and my friends got out and I told my

7 friends to stay in the car, "You didn't do

8 anything wrong. We didn't do anything

9 wrong, what is the problem?"

10 They kept saying, "There's a

11 crime over here. Didn't you see it? You

12 could be a suspect."

13 "Now I'm a suspect? Now you

14 telling me I'm a suspect?"

15 At which time me and him got

16 into an argument, because I told him, "I

17 didn't do anything and I'm not giving you

18 any ID until you tell me what you say I

19 did."

20 Q. What did he say?

21 A. He never told me.

22 Q. Did there come a time when you

23 identified yourself as a State trooper?

24 A. Yes, I did.

25 Q. When was that?

94278

116

1 WYNDER

2 A. After I told him the -- I said
3 I'm -- "The only reason I'm identifying
4 myself now is that you are pushing this to
5 the point where you have no right and what
6 you are doing is wrong and you are
7 violating my civil rights," and I said,
8 "I'm not going to take it anymore."

9 Once I showed them my shield, he
10 said, "why didn't you do that in the first
11 place?"

12 Q. What did you respond?

13 A. I told him, "I don't feel I need
14 to tell you that I'm a cop to get you to
15 respect my rights as a citizen." I said,
16 "I'm a citizen first, then a State
17 trooper."

18 Q. How did that incident end?

19 A. Well, he yelled and screamed and
20 I yelled and screamed at him and I told
21 him that I'm leaving.

22 I said, "Unless you want to
23 arrest me, I suggest you get out of my way
24 and I'm going to get out of here. If you
25 want to arrest me, I'll go to the station

117

94278

1 WYNDER

2 with you right now."

3 Q. In the yelling and screaming,
4 did he use profanity at you?

5 A. Yes, he cursed at me.

6 Q. What types of things did he say?

7 A. He told me, "Who the hell you
8 think you are? You being a smart ass.
9 Don't tell me you think you know the
10 law."

11 This is all before he found out
12 I was a trooper.

13 Q. Did you use profanity to him?

14 A. I don't recall. I might have
15 told him to shut the hell up, but I didn't
16 curse directly at him. I just told him I
17 wasn't going to give him my ID. He wanted
18 my ID.

19 Finally I said, "I'll give you
20 my ID," that's when I showed him my
21 shield.

22 Q. Did you end up going with them
23 to the stationhouse?

24 A. No. He told me I could go, and
25 then I told him, "Why? All of a sudden

□

118

1 WYNDER

2 now, because I'm a trooper, you're not

3 going to continue to harass me and ask for
Page 106

94278

4 me to come with you and what was I doing?"

5 All of a sudden all the

6 questions and everything stopped as soon

7 as I told him I was a State trooper.

8 Q. Did you do anything further that
9 evening?

10 A. Yes, as soon as I left him, I
11 went straight to the Newburgh
12 stationhouse.

13 Q. What was your intention in going
14 there?

15 A. To request to speak to a captain
16 or sergeant or his commander, to reflect
17 how I was harassed and I how I was
18 mistreated.

19 Q. Did you speak to someone?

20 A. Yes, I spoke to -- I believe it
21 was a sergeant on duty. I don't recall
22 his name.

23 Q. What did you tell him?

24 A. I told him exactly what
25 happened. I thought his cops were being

119

1 WYNDER

2 racist, they were picking on us. There
3 was a whole lot of people there, 20 people
4 there, but they only stopped the three
5 blacks who got out of the car, and I said
6 I didn't appreciate that.

94278

7 Then when I showed him I was a
8 trooper, all of a sudden he had no other
9 problems with me and let me go. I said,
10 "why is that? If he really thought I was
11 a suspect and I did something, why all of
12 a sudden if I'm a trooper I'm okay?"

13 Q. The officers that were involved
14 in the stop, were they all white?

15 A. Yes.

16 Q. When you spoke to the sergeant
17 and complained to him, what did he say in
18 response to you?

19 A. He was very demeaning. He told
20 me he wasn't going to do anything about
21 it.

22 Q. How was he demeaning? What did
23 he say?

24 A. He was just being, really, oh,
25 really, why didn't you do this? "I don't

□

120

1 WYNDER
2 believe they did that." why you suggesting
3 that we're being this and that. I said,
4 "okay." I said, "If you are not going to
5 make a complaint, then I'm going to write
6 a letter." I said, "I want to fill out a
7 form to write a letter" and he wouldn't
8 let me do that.

9 Q. Is that a form that they had at
 Page 108

94278

10 the police station?

11 A. Well, most police stations have
12 a complaint form.

13 Q. If you want to make a complaint
14 against a police officer. There's always
15 something you got to fill out. I wanted
16 to leave a paper trail that I was in the
17 station and what happened to me wasn't
18 right, and I wanted these officers talked
19 to and I wanted an apology from them.

20 Q. Were you able to fill out a
21 complaint form?

22 A. He refused.

23 Q. What did you do at that point?

24 A. I left. What could I do? I
25 knew that this wasn't going anywhere.

□

121

1 WYNDER

2 Actually, they requested that I leave the
3 station. So I left.

4 Q. Who requested that you leave?

5 A. The sergeant requested that we
6 leave.

7 Q. Why did they ask you to leave?

8 A. Because they weren't going to
9 take a complaint, and as far as they was
10 concerned, it was closed.

11 Q. Were you yelling and screaming
12 at the sergeant or anyone else there?

94278

13 A. No. I was very -- very
14 professional. I mean, they didn't do
15 anything to me. Why would I yell at
16 them?

17 Q. How did it come about that this
18 incident resulted in your being
19 disciplined?

20 A. Well, as soon as I left the
21 station, by the time I got home, I
22 received a phone call from my troop
23 commander saying that Captain Spahl had
24 initiated a complaint he received from the
25 City of Newburgh for me being

122

1 WYNDER

2 uncooperative with the City of Newburgh.

3 Q. Now, up until that time of this
4 incident with the City of Newburgh, how
5 was your relationship with Captain Spahl?

6 A. It was so-so. I didn't really
7 talk too much to him because I had been
8 out on sick leave for an injury.

9 Q. Did you have any problems with
10 him up until that time of the City of
11 Newburgh incident?

12 A. Not that I can recall.

13 Q. How did you come to find out
14 that Captain Spahl had gotten a complaint
15 from the City of Newburgh?

94278

16 A. He informed me and told me that
17 he had did a preliminary and he felt that
18 I was -- the complaint was warranted and
19 that it would proceed further.

20 Q. Did that result in charges being
21 brought against you?

22 A. Correct.

23 Q. What were those charges, if you
24 can recall?

25 A. I can't recall. I think --

123

1 WYNDER
2 bringing discredit upon the division, and
3 I believe not cooperating with a police
4 investigation.

5 Q. Did you have an opportunity to
6 say whether you were guilty or not guilty
7 to those charges?

8 A. Yes. It was done in the manner
9 in which it was supposed to have been
10 done. They took a statement from me.
11 They took statements from the other two
12 individuals in the car with me and then
13 after that they decided that I should be
14 given 20 days suspension or I could go to
15 a hearing.

16 Q. What did you decide to do?

17 A. At that time, not trusting my
18 PBA attorneys and not having an attorney,
Page 111

94278

19 I took the 20 days, because I know I
20 wasn't going to win because I already had
21 spoken to the two individuals who were in
22 the car with me who told them that I did
23 nothing wrong and State Police didn't want
24 to believe their version, so I figured, if
25 they are not going to believe the two

□

124

1 WYNDER
2 people that was in the car with me, what's
3 makes you think they are going to believe
4 me?

5 Q. So you decided not to challenge
6 at a hearing?

7 A. Correct.

8 Q. When you say you did not trust
9 your PBA attorneys, why didn't you trust
10 them?

11 A. Because from experience on the
12 job, they didn't do a job of defending
13 you.

14 Q. What was your experience with
15 them that led you to believe that?

16 A. Well, I had seen other troopers
17 get in trouble or disciplined and I've
18 seen the PBA and the New York State Police
19 numerous times violate their own rules
20 and regs, and the PBA would never do
21 anything about it.

94278

22 Q. This was based upon what you saw
23 happen to other troopers, not your own
24 specific experience?

25 A. Correct. Well, yes, in my own

□

125

1

WYNDER

2 experience, violating rules and regs, like
3 when I was at the Academy. You know, when
4 didn't -- I was supposed to be a
5 counselor; they wanted to make me do other
6 things. All the things that -- they just
7 never followed their own rules and regs.
8 whatever they want to do, the State Police
9 does.

10 Q. Can you tell me what State
11 Police rules and regs were violated by
12 what you were asked to do at the Academy?

13 A. well, as a counselor, I had a
14 job description. They tried to make me do
15 other things, as I already expressed to
16 you. That was violating their own rules
17 and regs.

18 Q. Anything else?

19 A. when I complained about the
20 EEOC, I never got the paperwork back that
21 I was promised that I would get back. I
22 had wrote the letter, but I never got a
23 copy of the letter back and I never got
24 any dispositions as to what happened, were

94278

25 the other individuals in the State Police

126

1 WYNDER

2 censured.

3 Q. Who did you write to?

4 A. The letter was to Lieutenant
5 Cook but to the superintendent of the
6 State Police. I just cc'd it to
7 Lieutenant Cook. It was to the
8 superintendent of the State Police.

9 Q. Did you get a response to that
10 letter?

11 A. I got --

12 Q. To the superintendent?

13 A. I got a verbal response from
14 Lieutenant Cook from what the
15 superintendent told him.

16 Q. What was that?

17 A. Again, that was the fact that,
18 while I was at the Academy, that the State
19 Police was wrong and that they should
20 recruit black instructors and that they
21 were going to implement.

22 Q. Your understanding was
23 Lieutenant Cook said that was told to him
24 by Superintendent McMahon?

25 A. Yes, and what he told me

94278

127

1

WYNDER

2 happened, I was allowed to return, Captain
3 Masterson was supposed to apologize to me
4 but he didn't. All he did was threaten
5 me, but he did tell me I was returning.

6 Q. Now, going back to the City of
7 Newburgh situation, you received this
8 20-day suspension and you did not have a
9 hearing regarding that, correct?

10 A. Correct.

11 Q. After that, were you disciplined
12 again while you were at SP Hawthorne?

13 A. I wasn't disciplined. I was
14 harassed.

15 Q. In what ways were you harassed?

16 A. Well, after that incident, that
17 started a hostile environment at my job,
18 and one of the first incidents to happen
19 after that was that in July -- in May, I'm
20 sorry, we had switched to new gun belts
21 and I had an existing hernia condition and
22 the new gun belts, the way they were
23 situated now, brought on my hernia and it
24 had to be removed, so I went out on sick
25 leave.

□

128

1

WYNDER

94278

2 Q. Did you have your hernia
3 removed?

4 A. Huh?

5 Q. Did you have your hernia
6 removed?

7 A. Before that incident, there was
8 another incident. I'm sorry.

9 I was out -- I got into a car
10 accident on the job. I got T-boned, hit
11 on the side on the lower Taconic.

12 Q. Who hit you?

13 A. A civilian.

14 Q. Were you on duty at the time?

15 A. Correct. I was going to an
16 accident.

17 Q. So you were going to the scene
18 of another accident --

19 A. I was assigned to another
20 accident, scene of an accident, and I was
21 on my way to a property damage auto
22 accident.

23 Q. Were you speeding at the time to
24 get to the accident?

25 A. I would say not speeding but I

129

1 WYNDER
2 was lights and sirens, and as I pulled up
3 to an intersection, I had the green light,
4 I waited and I went to make a left and I

94278

5 was hit from behind.

6 Q. what happened in the accident?

7 Were you injured?

8 A. Yes.

9 Q. what injuries did you sustain?

10 A. Neck and back injuries.

11 Q. what kind of neck and back

12 injuries did you have?

13 A. I had -- I don't recall what the
14 doctor said but I had a contusion or I had
15 bruises (indicating).

16 Q. Do you recall, were you treated
17 at an emergency room following the
18 accident?

19 A. They took me straight to the
20 emergency room.

21 Q. what emergency room?

22 A. Westchester Medical Center.

23 Q. Then you were seen by your own
24 physician?

25 A. I was seen by their physician

□

130

1 WYNDER

2 and then from there -- once you go out on
3 sick leave, you have to see a doctor if
4 you want to continue to get paid full pay.

5 Q. Did you do that?

6 A. Yes, I did.

7 Q. How long were you out receiving

94278

8 full pay?

9 A. Well, that -- I was out for
10 three months and then the State Police
11 said that I was fit -- they wanted me to
12 come back to duty and my doctor told them
13 that I wasn't ready, so they sent me to
14 their own doctor.

15 Q. What did their own doctor say?

16 A. That I wasn't recovered and I
17 wasn't 100 percent.

18 Q. What was the total amount of
19 time that you were out with the car
20 accident?

21 A. I don't recall. It could have
22 been six months, seven months. Finally,
23 State Police, my own doctor, their doctor
24 and another workers' Compensation doctor
25 said that I wasn't fit for full strenuous

□

131

1 WYNDER

2 duty.

3 There is no light duty in the
4 State Police. If you are not 100 percent
5 full duty, you cannot come back to work.
6 So upon hearing this, the State Police
7 sent me to a doctor down in Manhattan,
8 which I saw the doctor for exactly five
9 minutes.

10 Q. What did that doctor say?

94278

11 A. well, it took me 45 minutes to
12 get home. By the time I got home, there
13 was already a letter faxed to the station
14 ordering me back to work, that I was fit
15 for full strenuous duty.

16 Q. Did you report to work?

17 A. Yes, I did, because I was
18 ordered.

19 Q. what happened when you reported
20 back?

21 A. well, I came back to work. I
22 reported back to work and then I signed
23 out on sick leave that I was unable to do
24 my job due to the fact that I was still
25 injured.

132

1 WYNDER

2 Q. Were you having pain when you
3 reported back to work?

4 A. Of course.

5 Q. what kind of pain did you have?

6 A. Still having back and neck pains
7 and I still wasn't fit to do the job as a
8 trooper. There's a criteria that you have
9 to fulfill in order to come back to duty,
10 which the State Police has in their
11 manuals and their physical fitness, and
12 this doctor that I saw for five minutes
13 never used it. I saw him for five

94278
14 minutes. I didn't list nothing, I didn't
15 put on my belt, I didn't put on my vest.
16 All the stuff that I would be working with
17 when I'm on the job, and he declared me
18 fit, but my own doctor said I wasn't fit
19 to go back, so I didn't go back. So when
20 I went back, I signed out --

21 Q. What does that mean that you
22 signed out? Does that mean you sign some
23 piece of paper and you leave?

24 A. Well, you have to come back to
25 work or you are brought up on charges for

133

1 WYNDER
2 insubordination.
3 Q. So you returned to Hawthorne?
4 A. I had to, right.
5 Q. Then you said you signed out?
6 What does that mean?
7 A. You come in, you sign in for
8 duty and then I went to the blotter and I
9 physically wrote that I was unable to
10 perform my duties and that I'm going home
11 on sick leave now.

12 Q. Did you have to have the
13 permission of someone there to do that?

14 A. No. I mean there's a procedure
15 in the manual that you can come in, sign
16 in, sign out that you are sick and

94278

17 there's -- I believe it's a rule -- I
18 don't recall the rule right now, but it's
19 in the manual where you can contest that
20 you are still sick and you can go out on
21 sick leave if you have doctor's notes,
22 which I did. And then I requested a
23 hearing for that purpose. Everything is
24 set up so you can do that.

25 Q. Did you get that hearing?

25 Q. Did you get that hearing?

1

WYNDER

2 A. Well, while I was doing that
3 hearing, while I was calling my PBA
4 delegates, I was told to leave the station
5 by Captain Spahl.

6 Q. Let me make sure I'm clear about
7 this.

8 On a particular day, after you
9 had been out for a number of months, you
10 returned to SP Hawthorne on one particular
11 day, after seeing that doctor from State
12 Police, correct?

13 A. Correct.

14 Q. That day, you went and you
15 signed out on the blotter that you wanted
16 to leave, go home on sick leave, correct?

17 A. Correct.

18 Q. And that same day, while you
19 were still at SP Hawthorne, you were

94278

20 calling your PBA delegates to do the

21 hearing?

22 A. Correct.

23 Q. How long had you been in the

24 stationhouse at that point while you were

25 up to calling the PBA delegates?

135

1 WYNDER

2 A. I don't recall. Could be 45
3 minutes to an hour, because sometimes you
4 got -- the delegate's on the road. You
5 got to beep him. You got to wait for him
6 to call you back. It took a while for
7 anybody to call me back.

8 Q. Was that part of the
9 regulations, that once you signed out as
10 sick on the blotter and went out, that you
11 had to reach the PBA delegates that same
12 day?

13 A. No, but I wanted to because I
14 wanted to resolve the situation quickly so
15 that I wouldn't burn my own sick leave
16 time.

17 Q. When you say burn your own sick
18 leave time, what do you mean?

19 A. When they order you back to
20 work, the State Police stops paying you
21 full pay for being out without you using
22 your own time. Once you come back and you

94278
23 go out on your own sick leave which you
24 have a right to, you are using your own
25 sick leave.

136

1 WYNDER

2 Q. So you wanted to resolve the
3 situation so that you could go out and not
4 have to use your sick leave time, correct?

5 A. Correct.

6 Q. Were you able to reach the PBA
7 delegates that day?

8 A. Yeah. well, not from the
9 station because I was kicked out of the
10 station.

11 Q. So you were in the process of
12 calling them when you were kicked out?

13 A. Sergeant came up to me, Sergeant
14 Smoskey.

15 Q. what did he say?

16 A. He advised me that the
17 captain -- that Captain Spahl had informed
18 him that I had to leave the station.

19 Q. Did you have any sick time of
20 your own at that point?

21 A. Yes.

22 Q. So Sergeant Smoskey said that
23 Captain Spahl had said you had to leave
24 the station?

25 A. Correct.

94278

□

137

1 WYNDER
2 Q. Were you given a reason why you
3 had to leave?
4 A. Yes.
5 Q. What was the reason?
6 A. He said that if I was out on
7 sick leave, I'm not allowed in the
8 station. I told the sergeant that that
9 was wrong and that as long as you're not
10 suspended, you have access to any State
11 Police facility in the State of New York.
12 Q. What did you base that on?
13 A. It's in the manual.
14 Q. Did you have a conversation with
15 Captain Spahl directly at that time?
16 A. No, you can't. You have to go
17 chain of command. So I was already being
18 told by my sergeant, so I couldn't go over
19 his head. What I had to do, the sergeant
20 told me was I had to leave, at which time
21 I told him I was going to file a
22 grievance, which I did after I left the
23 station.
24 Q. With who do you file a
25 grievance?

□

138

94278

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WYNDER

2

A. Troop command. With my
sergeant. I filed it with my sergeant and
it goes up the chain of command.

5

Q. So did you file it while you
were there in SP Hawthorne that day before
you left?

8

A. No, I came back.

9

Q. When did you come back? How
long after you were told to leave?

11

A. I guess it was a day or two. I
typed up the memo and I gave it to my --
actually, I didn't come in the station, I
had him come out, because I wasn't in the
station.

16

Q. What was the result of the
grievance?

18

A. I got a phone call saying that I
was allowed back in the station and that
Captain Spahl was censured for his
wrongful orders for me leaving the
station. I then asked for a copy of this
letter of censure and they refused to give
me one.

25

Q. Who was telling you that you

□

139

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WYNDER

2

were allowed back in and Captain Spahl was
censured?

3

94278

4 A. Well, my sergeant -- my
5 immediate sergeant told me that I was
6 allowed back in the station.

7 Q. Sergeant Smoskey?

8 A. At that time -- yes, Sergeant
9 Smoskey. Or it could have been Sergeant
10 Zemanek, Z-e-m-a-n-e-k.

11 Q. So either Sergeant Smoskey or
12 Sergeant Zemanek, either of those told you
13 that you were allowed back in and Captain
14 Spahl was censured?

15 A. Yes.

16 Q. Did you go back to SP Hawthorne
17 at that point?

18 A. Well, I was still out on sick
19 leave, but now I was allowed to come in
20 and do official business and do my memo or
21 whatever I needed to do, pick up my check.

22 Q. How long did you stay out on
23 sick leave from that day on?

24 A. I don't recall. I think I was
25 out another maybe two months.

140

1 WYNDER

2 Q. Was that on your own sick leave
3 or was that paid as part of the accident?

4 A. Well, what happened was my own
5 sick leave. Then you have a hearing from
6 workers' Comp and workers' Comp

94278

7 determined that I was injured in the
8 course of my duties which would have given
9 me full pay, and when I told the workers'
10 Compensation that I didn't want any money
11 from my injuries, I wanted my time
12 restored, they told me that the State
13 Police refused to accept my time restored,
14 which was illegal by workers' Compensation
15 law.

16 Therefore, I -- the State Police
17 took from me over two months of sick
18 leave.

19 Q. who told you that?

20 A. who told me that?

21 Q. Yes.

22 A. It's in the rules of the
23 workers' Compensation.

24 workers' Compensation told me
25 that the State Police refused to take my

141

1 WYNDER

2 time back, which is what they were
3 supposed to do if you were injured on the
4 job.

5 Q. Did you do anything to fight
6 that decision?

7 A. Yes, I wrote memos, I asked
8 workers' Comp and workers' Comp said there
9 was nothing that they could do about it.

94278

10 And the State refused to pay me -- all
11 that time I was out I got half pay, which
12 I should have got paid full pay.

13 Q. So your understanding was that
14 you were basically denied half of your pay
15 for that time period?

16 A. That was a fact, that I was
17 denied pay for the time that I was out for
18 an injury that was sustained in the course
19 of my business and that the State Police
20 never contested. Once the State Police
21 doesn't contest an injury, they have to
22 pay you.

23 Q. Do you have an understanding of
24 who made that decision not to accept the
25 time restored?

□

142

1 WYNDER

2 A. All I was told from workers'
3 Comp was that Albany would not -- payroll
4 would not accept the time back from
5 workers' Comp.

6 Q. You said you wrote to workers'
7 Comp. Did you write to anyone else?

8 A. No, just to workers' Comp.

9 Q. Did you seek any help from any
10 other agency regarding that?

11 A. No. I spoke to my sergeant and
12 he made a couple of phone calls for me,

94278

13 but he said, "They don't want to pay
14 you."

15 Q. Did you file anything with any
16 outside agency regarding that other than
17 workers' Comp?

18 A. Not that I recall.

19 Q. Did you go to any court
20 regarding that?

21 A. Not that I recall.

22 Q. After that, there came a time
23 when you returned back to work.

24 was there any other time that
25 you were disciplined after you returned

143

1 WYNDER

2 from the car accident?

3 A. Well, when I came back from the
4 accident, we had switched to new guns. We
5 had switched to new guns and that's when
6 the case of the hernia presented itself.

7 Q. When you say "new guns," what
8 was the new gun now?

9 A. The .357 Magnum was carried in a
10 different position. It was carried in the
11 same position, but the ammunition was slid
12 into slots, extra bullets. But when we
13 changed to automatics, you had two huge
14 cases that held extra clips and they --
15 when you sat down, they pushed down on you

94278

16 and that caused my hernia to flare-up, and
17 I had to have it removed, so I went out on
18 sick leave again. I used my own sick
19 leave because it wasn't job related.

20 Q. what happened as a result of
21 that?

22 A. Upon returning, I returned on a
23 Sunday, Monday there was a supposedly
24 random drug test that was done at SP
25 Hawthorne.

144

1 WYNDER

2 Q. when you say "supposedly," why
3 do you say that?

4 A. well, DOT establishes guidelines
5 for random drug tests.

6 Q. Is that the New York State
7 Department of Transportation?

8 A. Federal Department of
9 Transportation In that mandate, each
10 member is supposed to have a 45-minutes
11 class on why you are subjected to random
12 drug testing, why you -- you know, why
13 they can do it, and if you are found -- if
14 you are found tested positive, what is
15 your recourse and what do you have to do.
16 It also outlines how procedures are going
17 to be done.

18 Example, everybody's social
Page 130

94278

19 security number or the whole station. And
20 up to this point, Hawthorne had never,
21 ever been drug tested.

22 Q. How long had the procedure been
23 in effect at the point when this random --

24 MS. ODESSKY: Strike that.

25 Q. How long had this procedure for

□

145

1 WYNDER

2 the random drug testing been in effect at
3 the time you were to be tested at SP
4 Hawthorne?

5 A. There was never a procedure in
6 place. That's why I said supposedly
7 random drug testing. There was never
8 established, by the State Police, a
9 protocol and systematic system in which a
10 random drug test can be held.

11 Q. So when you returned on the
12 Sunday, were you drug tested on that day?

13 A. No, that was an off day. All
14 captains and Internal Affairs do not work
15 the weekends, so it was based on my return
16 which was the next day, the Monday. And
17 when they random drug tested me -- when I
18 say random -- and supposedly it was
19 because they only did -- you have three
20 tours that the State Police works in the
21 day. You have what they call the A line

94278

22 which is 11:00 p.m. to 7:00 a.m. in the
23 morning; a B line which is 7:00 a.m. to
24 3:00 p.m. in the afternoon; and a C line
25 which is from 3:00 p.m. to 11:00 at

□

146

1 WYNDER

2 night.

3 On this particular day, my
4 second day back to work, we had a drug
5 test. They only drug tested the B line,
6 which I was working, and the C line that
7 had just came in. They did not drug test
8 the A line and they did not drug test
9 individuals that were still hanging around
10 in the station that had worked the A
11 line. They didn't even test them. So I
12 felt that this was targeted at me and that
13 this was because I had just returned to
14 work and they only did my tour.

15 Q. why did you think that it was
16 targeted at you?

17 A. well, because of my experience
18 with Captain Spahl, the fact that he
19 didn't like the fact that he had just been
20 censured, and I felt that I was being
21 picked on because the color of my skin,
22 because I was very vocal, also.

23 Q. when you say "very vocal," in
24 what way were you very vocal at Hawthorne?

94278

25 A. At Hawthorne, if somebody was

147

1

WYNDER

2 wrong, I was very studious to rules and
3 regulations, and when anybody was ever
4 mistreated, I would advise them that --
5 read the manual, this is your procedures
6 you can do. They can't do this or that to
7 you.

8 Q. Can you give me an example of a
9 particular officer who you thought was
10 mistreated who you advised?

11 A. There was a couple. Timothy
12 McKenney.

13 Q. How he was mistreated?

14 A. No, he -- the State Police would
15 just do -- like the sergeant would tell
16 you to do something, or the job would tell
17 you to do something, like with the drug
18 test, after they finished drug testing me,
19 I asked them could I go see my own doctor.

20 Q. Hold on a second, because I was
21 asking you particularly about Timothy
22 McKenney, and you said that that was one
23 trooper that you advised him when he was
24 being mistreated.

25 So I'm asking you specifically

94278

148

1

WYNDER

2

about him, how was he being mistreated and

3

what did you advise him to do?

4

A. Oh, I would tell him to get his

5

PBA rep --

6

Q. What was the mistreatment?

7

A. Well, they would accuse him of

8

doing other things that -- like not

9

writing enough tickets, not doing his job,

10

when other white troopers weren't writing

11

tickets and they weren't brought up on

12

charges.

13

Q. Was he African American?

14

A. Yes, he was.

15

Q. Did he get his PBA

16

representative?

17

A. I believe he did. I'm not quite

18

sure.

19

Q. Can you tell me about any other

20

troopers that you felt were being

21

mistreated who you advised?

22

A. There was a few at Hawthorne.

23

Q. Who were they, if you can

24

recall?

25

A. Trooper David Blake.

149

1

WYNDER

94278

2 Q. How was he being mistreated?

3 A. Again, the same. You know,
4 Hawthorne was predominantly a black
5 station and all the commanders were white
6 and you were sent to SP Hawthorne, it was
7 considered to be the misfit of the State
8 Police. That's where troublemakers and
9 troopers that they didn't like went to --

10 Q. How did you get that
11 impression? Where did you get that from?

12 A. A lot of the guys that was in SP
13 Hawthorne at one time had problems with
14 the job and we were all sent there and the
15 whole station was black, which was unusual
16 for the State Police.

17 Q. When you say the whole station
18 was black, what do you mean?

19 A. All the troopers were black.

20 Q. Were there any troopers who were
21 not black?

22 A. I think there was one trooper
23 who was white and he got transferred back
24 to SP Hawthorne after he got involved in
25 an investigation in which he was

□

150

1 WYNDER
2 disciplined and demoted and he was sent to
3 Hawthorne.

4 Q. Do you know who that was?

5 A. Trooper Sagilabenni,
6 s-a-g-i-l-a-b-e-n-n-i.

7 Q. Going back to the drug testing
8 that occurred on the second day after you
9 returned, did you have an understanding
10 whether there had been any drug testing at
11 Hawthorne prior to that day?

12 A. What do you mean? I don't
13 understand.

14 Q. Prior to that day, that was the
15 second day you returned back to work from
16 being out on the sick leave --

17 A. Okay.

18 Q. -- was it your understanding
19 that this was the first time there had
20 ever been any drug testing at SP
21 Hawthorne?

22 A. Correct.

23 Q. So up until that time, would it
24 be fair to say that they never did any
25 drug testing whatsoever at SP Hawthorne?

1 WYNDER

2 A. Correct.

3 Q. How do you know that?

4 A. I was informed by the dispatcher
5 and by a sergeant who had been there for
6 years and one of the cleaners.

7 Q. Did you ask anybody about why

94278

8 only the B and the C lines were tested?

9 A. Of course. I asked Internal
10 Affairs, who ironically was administering
11 the drug test.

12 Q. When you say you asked Internal
13 Affairs, were they at SP Hawthorne to
14 administer the drug test?

15 A. They collected the samples, yes.

16 Q. Who did you ask at Internal
17 Affairs?

18 A. I don't recall who was the lead
19 officer that day. I only remember one I
20 know was there. His name was Investigator
21 Kopy.

22 Q. What did Investigator Kopy tell
23 you as to why only those lines were being
24 tested?

25 A. He wouldn't answer my question.

□

152

1 WYNDER

2 I asked him if this was random and
3 shouldn't everybody in the station be
4 tested. And they wouldn't answer me.
5 They just said, "We're going to" -- I
6 said, "How can you tell me this is random
7 when you are doing two out of three
8 tours? That's not random to me."

9 Q. At the time that this drug test
10 was done, would it be fair to say that all

94278
11 the troopers at SP Hawthorne were black?
12 A. No, at that time Benny
13 sagilabenni was there.
14 Q. Other than him, all the other
15 troopers there were black?
16 A. As I recall is, I believe they
17 were. I don't know for sure, but for a
18 while when I was there, we were all
19 black. Then Trooper Sabilabenni came back
20 and then I think we had one more white
21 trooper that again was transferred because
22 he got in trouble.
23 Q. Who was that?
24 A. Trooper Kakavas.
25 Q. So would it be fair to say when

□

153

1 WYNDER
2 they tested -- on that second day after
3 you returned, they tested the B and the C
4 lines and all the officers, except for
5 possibly Trooper Sabilabenni and Trooper
6 Kakavas, who were tested were black?
7 MR. MERRITT: Let me object to
8 that question just because of --
9 MS. ODESSKY: Mr. Merritt, I
10 asked you please not to do speaking
11 objections. I note your objection for the
12 record, but I'll ask you to let
13 Mr. Wynder --

14 MR. MERRITT: He's not going to
15 answer that question.

16 MS. ODESSKY: What is the basis
17 of your objection?

18 MR. MERRITT: That's what I was
19 just going to tell you before you
20 interrupted me. You want to interrupt me,
21 you can. You said all the officers. He
22 has testified that we have troopers in the
23 State Police and we have officers.

24 MS. ODESSKY: I understand.
25 I'll clarify.

154

1 WYNDER
2 MR. MERRITT: All I was trying
3 to do was clarify your question so it's
4 easier to answer and you jumped down my
5 throat. I don't think that's a good idea.
6 MS. ODESSKY: Off the record.
7 (Discussion off the record.)
8 BY MS. ODESSKY:
9 Q. Mr. Wynder, just as relating to
10 troopers who were subject to the drug test
11 on that day that you're speaking about,
12 those troopers, with the exception
13 possibly of Trooper Sabilabenni and
14 Trooper Kakavas, were all black; is that
15 correct?
16 A. On that day, those two tours

94278

17 were all black, yeah.

18 Q. Did you have an understanding as
19 to who made the determination about what
20 lines would be tested?

21 A. After the testing, I was very
22 upset. I asked -- I raised my hand and I
23 asked the head of the Internal Affairs
24 Department, whoever came down, I don't
25 remember his name, I told him, "Can I

□

155

1 WYNDER

2 leave and go have my own" -- I said, "Can
3 I leave" -- "can I take time off to go to
4 the doctor's?"

5 He asked me, "why?" And I told
6 him, "I wanted to go to my doctor and have
7 my own blood tested."

8 He said, "why would you do
9 that?"

10 I said, "Because I feel that
11 this is a set-up and that you picked --
12 you picked this tour, you came down here
13 and you picked this tour and you only do
14 two-thirds of the station, which leads me
15 to believe that this is a set-up, and also
16 to the fact that why would Internal
17 Affairs be at a drug testing? Internal
18 Affairs is only after something has been
19 commenced that is wrong. So why would

20 Internal Affairs be there collecting⁹⁴²⁷⁸
21 samples?"
22 Q. Did you feel at that point that
23 Internal Affairs had some reason to be
24 targeting you in particular?
25 A. Of course. It was common

□

156

1 WYNDER
2 knowledge -- everybody in Troop K knew who
3 they were looking for. They were looking
4 for me.
5 Q. When you say "everyone in Troop
6 K," who do you mean?
7 A. Everybody. Everybody in SP
8 Peekskill, SP Hawthorne. Even the
9 sergeants knew. Even they knew why they
10 were down here. I mean, you know, it's
11 ironic that I'm out for three months and
12 then as soon as I come back, the next
13 day -- the next business day, the State
14 Police is down there taking a piss test
15 from everybody.
16 Q. When you say that everyone knew
17 that Internal Affairs was looking for you,
18 what do you mean looking for you?
19 A. They were trying to catch me
20 using drugs. They believed that I was a
21 drug user.
22 Q. What is your understanding about

94278
23 why they believed you were a drug user?
24 A. well, to me, the way you
25 discredit a black man is associate him

157

1 WYNDER

2 with drugs.

3 Q. Did anyone tell you specifically

4 that someone in State Police thought you

5 were using drugs?

6 A. Well, put it this way: I didn't

7 find that out until my workers'

8 compensation hearing when I was labeled a

9 drug dealer and a murderer.

10 Q. Let me back up for a minute.

11 On the day that the drug test

12 was taken, you said after the drug test

13 was taken, you were very upset and you

14 came back and you complained about the

15 tests being done of only B and C lines,

16 correct?

17 A. Correct.

18 Q. On that day, did you have an

19 understanding that you were being singled

20 out?

21 A. Yes, by the end of that day, I

22 was -- I was called -- people called my

23 cell phone, people called the station and

24 even the sergeants told me they believed

25 that this drug test was targeted at me,

94278

□

158

1 WYNDER
2 and at that time I found out that, through
3 my PBA president, which I called at that
4 time, my delegate, that this test was
5 originally scheduled for July -- I believe
6 July 29 of that year and they found out
7 that I was still on sick leave and then
8 they -- they held it off until I returned
9 to work.

10 Q. who told you that?

11 A. I was told by my president,
12 Trooper Al wolford (phonetic), and by my
13 station commander.

14 Q. who was that?

15 A. I believe at the time it was
16 Zemanek or Zone Sergeant Antalek.

17 Q. So it's your testimony that
18 these individuals told you specifically
19 that the drug test was held off until you
20 returned from sick leave?

21 A. Correct. And the question that
22 I was told to the PBA was that they said
23 that they didn't have enough manpower at
24 that time to do it on July 29, but the
25 question was raised was, why would you --

□

159

94278

1 WYNDER

2 if it's random, which, again, as I told
3 you, there was no random drug testing,
4 this was set up, because the random drug
5 testing, if you pull a station to be drug
6 tested or individual to be drug tested, if
7 that person is not there on that day, it
8 goes back into the bend. You don't hold
9 it off until the person comes back in. In
10 fact, the State Police said we're coming
11 down in July. When they found out I was
12 on sick leave, they postponed it, and as
13 soon as I came back to work, they
14 scheduled the drug test.

15 Q. Was there anyone else whose name
16 you can tell me who told you that the test
17 was held off until you returned?

18 A. Trooper Wolford who spoke to
19 colonel -- it was -- head of employee
20 relations. Colonel Corbett (phonetic).

21 Q. Is it your understanding that
22 Colonel Corbett told Trooper Wolford that
23 the test was held off until you returned
24 to work?

25 A. Correct. And I also -- after

160

1 WYNDER

2 that, because I made such a stink that
3 this was not random, a preliminary drug
Page 144

94278

4 testing program was drafted, which I
5 have -- I believe I saw a copy of. The
6 PBA had a copy of a drug testing that was
7 supposed to be set up because the drug
8 testing that they administered was wrong,
9 it was illegal.

10 Q. How was it illegal?

11 A. Because it wasn't in the
12 manual. You go to any other police
13 agency, you open up the manual, it will
14 tell you why they are drug testing, it
15 will -- for example, NYPD, at, Social
16 Security numbers are pulled randomly, you
17 are notified that you have to come to One
18 Police Plaza, which is a civilian unit
19 inside One Police Plaza which is medical,
20 no Internal Affairs, no nothing, you
21 submit your urine test and you go home.
22 If you are found positive, Internal
23 Affairs will contact you. If you are not
24 working that day, you're not scheduled to
25 work the day that your Social Security

□

161

1 WYNDER
2 number is pulled, it goes back into the
3 bunch and they'll get you whenever your
4 Social Security number comes up random.
5 It's a set formula. The State Police did
6 not have it in place, which is federal

94278

7 guidelines.

8 Q. Is it your testimony that they
9 put this formula in place because of the
10 complaints that you made regarding the
11 drug testing done at SP Hawthorne?

12 A. No. They never put in a
13 formula. They just came down and decided
14 to take urine from me to see if I was
15 using drugs.

16 Q. Right, I understand. But you
17 are saying now that there is a procedure
18 put in place for drug testing. You were
19 talking to me about there's a preliminary
20 drug testing program. You are telling me
21 now that there's a procedure put in place
22 for doing the drug testing, correct?

23 A. No, there's still not one.

24 Q. Then I misunderstood you.
25 what were you telling me just a

□

162

1 WYNDER
2 moment ago about a drug testing program?

3 A. I was the only one who
4 complained about the test being illegal.
5 So, therefore, after that the PBA was
6 trying to get the State Police to enact
7 one.

8 Q. So you are telling me as of --
9 as far as you know, there's not one in
Page 146

94278

10 place?

11 A. To this day, no, the State
12 Police does not have a certified drug
13 testing program.

14 Q. You said that on that day when
15 you were drug tested, Internal Affairs was
16 down there for the drug testing, correct?

17 A. Correct.

18 Q. And that was, in your
19 understanding, that was unusual, that
20 Internal Affairs would come down to do the
21 drug testing?

22 A. well, I would think so being
23 Internal Affairs is there to investigate
24 any crimes or any misbehavior by a
25 member. why would they be there if I'm

□

163

1 WYNDER

2 giving a sample of urine to a cup that
3 hasn't been tested yet?

4 Q. what is your understanding about
5 who should be conducting the drug testing
6 at the various troops?

7 A. It should be anybody -- it
8 should be -- actually, it should be a
9 medical professional person. You can have
10 a trooper there for security purposes but
11 why should Internal Affairs be there?

12 Q. Now, have you been aware since
Page 147

94278

13 that date of the time when you were drug
14 tested, were you aware of any other dates
15 on which drug testing occurred at SP
16 Hawthorne?

17 A. Since I've left that station?

18 Q. Since that day.

19 A. There has never been another
20 drug testing in that station.

21 Q. So that day, which was two days
22 after you came back from your sick leave,
23 was the only day on which a drug test was
24 done at SP Hawthorne?

25 A. Correct, of my knowledge.

164

1 WYNDER

2 MR. MERRITT: why did you say
3 two days?

4 MS. ODESSKY: I'll clarify
5 that.

6 Q. You returned on a Sunday to work
7 and do you have that -- as you sit here
8 today, do you have that exact date?

9 A. State Police would have it.

10 Q. So the second day --

11 A. First business day.

12 Q. The first business day but the
13 second day that you were actually at work,
14 that was the date of the drug testing,
15 just so we're clear, and we'll get that

94278

16 exact date for the record.

17 A. That's correct.

18 Q. So my question was to you, since
19 that particular day on which you were drug
20 tested after you returned to work, to your
21 knowledge, there's never been another drug
22 test at SP Hawthorne?

23 A. From that day to the day -- from
24 that day to the day that I retired, there
25 was no drug testing at SP Hawthorne.

□

165

1 WYNDER

2 Q. And you retired in 1999?

3 A. 1999.

4 Q. Have you been in touch with
5 anyone from the State Police who would
6 tell you about whether tests were done at
7 SP Hawthorne from '99 to the present?

8 A. Correct. I've been in touch
9 with some of the troopers and sergeants
10 and they've all told me that they've never
11 had another drug test there.

12 Q. As far as you know, from that
13 date when you returned from sick leave to
14 the present day, today, there's not been
15 any further drug test at SP Hawthorne?

16 A. Correct.

17 Q. Do you have any familiarity with
18 drug testing at other troops?

94278

19 A. What do you mean by
20 "familiarity"?

21 Q. Do you have any understanding of
22 whether random drug testing or any type of
23 drug testing was done at troops other than
24 SP Hawthorne?

25 A. I had heard that other stations

□

166

1 WYNDER

2 had been randomly drug tested, also, but
3 the rumors of that was, if it was random,
4 how can one station be tested three times
5 in one year, actually within nine months
6 and again they used the same system, they
7 only went down and tested only certain
8 tours, and the reason why I say again it's
9 a tool used by Internal Affairs, because
10 the State Police -- as a trooper you have
11 your schedule for a month, so for the next
12 30 days, anybody in the State Police knows
13 when you're working and when you're not
14 scheduled to work.

15 Q. When you say that the station
16 was tested three times in a month, what
17 station are you referring to?

18 A. SP Newburgh.

19 Q. You never worked at SP Newburgh,
20 correct?

21 A. Correct.

94278

22 Q. Do you know when this was, what
23 year this was that the SP Newburgh was
24 tested three times in a month?

25 A. Had to be prior to my testing.

□

167

1 WYNDER

2 Q. Do you know the racial
3 composition of the troopers at SP
4 Newburgh? whether they are primarily
5 black or white or other races?

6 A. At that time I couldn't tell
7 you. I would believe that station was
8 more minority than white.

9 Q. I'm just going to go back to
10 some other things and then we'll come back
11 to your time at SP Hawthorne.

12 Prior to being employed with the
13 State Police, have you been employed in
14 other capacities, prior to your time when
15 you joined the State Police?

16 A. I worked on Wall Street.

17 Q. Who did you work for?

18 A. Started with DLJ.

19 Q. What is DLJ?

20 A. Donaldson, Lufkin & Jenrette.

21 Q. What is that?

22 A. It's a brokerage firm.

23 Q. What did you do for them?

24 A. I worked in the mail room.

94278

25 well, I worked with the stockbrokers. I

168

1 WYNDER

2 handed out anything that they needed.

3 Q. Was that your first job out of
4 high school?

5 A. Full-time job, yes.

6 Q. Prior to that, did you have
7 part-time jobs?

8 A. Yes.

9 Q. What part-time jobs did you
10 have?

11 A. Worked at a shoe store.

12 Q. What shoe store?

13 A. Shoe In.

14 Q. Where was that?

15 A. Based in New Jersey and
16 Lexington Avenue.

17 Q. What town or city in New Jersey?

18 A. Fort Lee.

19 Q. How long were you there?

20 A. During the summer.

21 Q. Anyplace else?

22 A. Nope, that was it.

23 Q. When you worked at DLJ, did you
24 have a supervisor there?

25 A. Yes, I did.

94278

169

1

WYNDER

2

Q. who was that?

3

A. I couldn't recall.

4

Q. How long did you work there?

5

A. I really don't recall.

6

Q. The entire time that you worked

7

there, did you work in the mail room or

8

you worked somewhere else?

9

A. No, I worked on the floor. All

10

the mail was delivered to me. I didn't

11

work in the mail room. I was just in

12

charge of handing out all the mail and

13

supplies.

14

Q. Did you have any other position

15

there?

16

A. No.

17

Q. From there, did you work at any

18

other place prior to State Police?

19

A. I left there and I went to

20

Shearson, Lehman and American Express.

21

Q. What did you do there?

22

A. I worked in the cash unit which

23

handled all the inventory -- all the sales

24

that went through the company.

25

Q. Do you know who your supervisor

□

170

1

WYNDER

2 was there? Do you recall?

3 A. No.

4 Q. How long did you work there?

5 A. Couple of months.

6 Q. why did you leave DLJ?

7 A. More money, and I wasn't allowed
8 to finish my series 7 course, but
9 basically more money.

10 Q. When you say you weren't allowed
11 to finish your Series 7, what do you mean?

12 A. well, I wasn't going to be a
13 stockbroker there, so they didn't want to
14 pay for it.

15 MR. MERRITT: Just let the
16 record reflect a Series 7 seems to be the
17 question here -- Series 7 is a testing
18 program to become a stockbroker registered
19 with the Exchange.

20 Q. Just so I'm clear, when you were
21 working for DLJ, they did pay for you
22 initially to take the first part of the
23 series ??

24 A. Correct.

25 Q. And then you wanted to take the

1 WYNDER

2 second part, but they did not want to pay
3 for that?

4 A. Correct.

5 Q. Did they give you a reason why
6 they didn't want to pay for that?

7 A. I just told you they told me
8 that they wouldn't hire me as a
9 stockbroker, so they weren't going to let
10 me finish up the course, they weren't
11 going to pay for it.

12 Q. Did they give you a reason as to
13 why they wouldn't hire you as a
14 stockbroker?

15 A. They just said they weren't
16 going to hire me as a stockbroker.

17 Q. Did you make any complaint
18 regarding DLJ or that determination?

19 A. No. I just offered to pay for
20 it myself and they said no.

21 Q. When you went to Shearson,
22 Lehman, did they have the opportunity for
23 you to take that Series 7 test?

24 A. I didn't want to.

25 Q. Just so I'm clear, the Series 7

172

1 WYNDER
2 course is something that you have to take
3 through a company that you work for or
4 it's given in an outside place?

5 A. They -- any of us here could go
6 take it. But back in 1983, '84, back at
7 that time you had to be sponsored by the

8 company that you work for. 94278

9 Q. So, in other words, even if you
10 were offering to pay for it, you still
11 needed them to sponsor you?

12 A. Correct.

13 Q. At Shearson, Lehman, how long
14 were you there, approximately?

15 A. About four months.

16 Q. why did you leave there?

17 A. They had layoffs, so I was the
18 last one in, first one out.

19 Q. After that, did you have another
20 job before State Police?

21 A. I went to work directly for
22 Paine, Webber.

23 Q. what did you do for them?

24 A. Cash dividends.

25 Q. Do you remember your supervisor

173

1 WYNDER

2 there?

3 A. No. Yes, his name was Jose,
4 that's all I remember.

5 Q. How long did you work there?

6 A. I can't recall.

7 Q. why did you leave there?

8 A. More money.

9 Q. where did you go from there?

10 A. Oppenheimer.

11 Q. what did you do there?⁹⁴²⁷⁸
12 A. Mutual funds.
13 Q. what was your position?
14 A. Mutual fund -- supervisor of
15 mutual funds.
16 Q. Did you have a supervisor there?
17 A. Yes.
18 Q. who was that?
19 A. I can't remember his name right
20 now.
21 Q. How long were you at
22 Oppenheimer?
23 A. For about a year and a half,
24 until I went to the State Police.
25 Q. what made you decide to leave

□

174

1 WYNDER
2 there and go to State Police?
3 A. I had taken all civil service
4 tests and I wanted to be a trooper, and
5 stability. There wasn't a lot of
6 stability at Wall Street. I saw people
7 coming and going.
8 Q. So Oppenheimer was your last job
9 before the State Police?
10 A. Correct.
11 Q. were you ever disciplined on any
12 of the jobs that you had prior to State
13 Police?

94278
14 A. No. That I can recall.
15 Q. Did you ever receive any type of
16 counseling letter or anything like that?
17 A. Not that I can recall.
18 Q. Now, during the time that you
19 were employed, during your entire time
20 being employed with New York State Police,
21 did you have outside employment?
22 A. Did I work for somebody else?
23 Q. Yes.
24 A. I worked for a mortgage broker.
25 Q. Who was that?

□

175

1 WYNDER
2 A. I don't recall.
3 Q. When did you do that?
4 A. I don't recall what year it was.
5 Q. You were with State Police for
6 12 years. So of those 12 years, was it
7 early on in your career, later?
8 A. Early on.
9 Q. So you would say within the
10 first few years?
11 A. I would say the first few years,
12 yes.
13 Q. Was it within the first year?
14 A. No.
15 Q. In the second year?
16 A. I don't recall, but I know it

94278
17 wasn't in the first year.
18 Q. Where was the mortgage broker
19 located?
20 A. White Plains.
21 Q. What did you do for them?
22 A. Basically I just referred people
23 to get mortgages, try to take mortgages.
24 Q. Did you have to get permission
25 from State Police to do that?

176

1 WYNDER
2 A. Yes.
3 Q. Who gave you permission to do
4 that, if you can recall?
5 A. My sergeant signed off on it.
6 Q. Was that Sergeant Welsh?
7 A. I believe, yes, it would have
8 been, yes.
9 Q. That was while you were at
10 Peekskill?
11 A. Correct.
12 Q. Other than that, any outside
13 employment where you worked for someone
14 else?
15 A. I formed my own company.
16 Q. What company was that?
17 A. For You Enterprises.
18 Q. When did you form that company?
19 A. I don't recall. '94, '95,

20 somewhere around there. 94278
21 Q. what type of company was that?
22 A. T-shirts and promotions.
23 Q. what you say "promotions," what
24 do you mean?
25 A. we promoted a concert.

□

177

1 WYNDER
2 Basically, we were trying to promote other
3 concerts, but basically we did one concert
4 and then we wanted to sell T-shirts.
5 Q. when you say "we," did you have
6 other individuals who were in the company
7 with you?
8 A. Yes.
9 Q. who were they?
10 A. My wife, Chandra Wynder, at the
11 time and Christopher Downing.
12 Q. Christopher Downing?
13 A. And Terrence Williams.
14 Q. Christopher Downing and Terrence
15 Williams, are they related to you?
16 A. No.
17 Q. How did it come about that you
18 formed this company?
19 A. we were friends and we wanted to
20 sell T-shirts and maybe promote a concert
21 here or there.
22 Q. Did you get permission from

94278
23 State Police to do this outside work?
24 A. well, I wasn't working. We
25 formed a company. I was not working.

□

178

1 WYNDER
2 Q. Did you have an understanding
3 that you had to have the permission of
4 State Police to enter into this outside
5 company?
6 A. They said I had to, so I typed
7 up a memo and I submitted it and it was
8 approved by sergeant -- my sergeant signed
9 off on it.
10 Q. Was that Sergeant Welsh again?
11 A. No.
12 Q. What sergeant was that?
13 A. Smoskey, S-m-o-s-k-e-y.
14 Q. Were you actually incorporated
15 as a company or was it a partnership?
16 What was the --
17 A. Incorporated.
18 Q. Did you let the State Police
19 know about the company or did they come to
20 you and say, you know, you need to fill
21 out paperwork?
22 A. I came to them.
23 Q. Who did you approach regarding
24 the company?
25 A. Sergeant Smoskey.

94278

179

1

WYNDER

2

Q. Other than the For You

3

Enterprises, were you involved in any

4

other companies during the time that you

5

were in the State Police?

6

A. No, not that I can recall.

7

Q. How long did you have that For

8

You Enterprises?

9

A. We had it up until I started

10

having problems with the State Police.

11

Q. When was that?

12

A. I would say right around 1997.

13

Q. What happened to the business?

14

A. We dissolved it.

15

Q. Why did it dissolve?

16

A. Because all of a sudden three of

17

the members in the corporation were being

18

harassed by their job.

19

Q. Now, when you say "three of the

20

members," you're referring to yourself,

21

Christopher Downing and Terrence Williams?

22

A. Correct you are.

23

Q. And Christopher Downing and

24

Terrence Williams also work for State

25

Police?

180

94278

1 WYNDER

2 A. Terrence Williams worked for the
3 State Police.

4 Q. Who did Christopher Downing work
5 for?

6 A. U.S. Customs.

7 Q. Where in the State Police did
8 Terrence Williams work?

9 A. SP Hawthorne.

10 Q. Does Terrence Williams still
11 work for State Police?

12 A. Yes, he does.

13 Q. Do you know where he currently
14 works?

15 A. SP Hawthorne.

16 Q. You say that the three members,
17 Mr. Downing, Mr. Williams and yourself
18 were being harassed by State Police. In
19 what way were you being harassed?

20 A. Well, at my hearing in 1998,
21 while on the stand, Lieutenant Barbaria
22 said that I was being criminally
23 investigated for a murder that took place
24 in California in 1989 and that it was over
25 a drug deal that went bad.

□

181

1 WYNDER

2 Q. What is your understanding about
3 where this information came from?

94278

4 A. well, at the hearing, they told
5 us that they couldn't reveal where it came
6 from, a confidential source.

7 Q. Is it your understanding that
8 state Police have a confidential source
9 for this information?

10 A. well, we asked during the
11 hearing to produce the confidential
12 informant and also to produce the
13 confidential informant's paperwork, and
14 the State Police said they had no such
15 paperwork. we requested it again at
16 workers' Compensation and we had the same
17 thing, that there was no paperwork.

18 Q. As you sit here today, do you
19 believe that State Police had a
20 confidential informant for the
21 information?

22 A. No.

23 Q. Going back to the time when you,
24 Mr. Downing and Mr. Williams were engaged
25 in the For You Enterprises, did you

□

182

1 WYNDER
2 actually sell T-shirts?

3 A. We did at one concert, yes, we
4 did.

5 Q. What concert was that?

6 A. It was a concert in Westchester
 Page 164

94278

7 County.

8 Q. what group was playing?

9 A. I don't recall. It was a dance
10 concert.

11 Q. what year was that? Do you
12 remember?

13 A. No, I don't recall.

14 Q. where in Westchester County was
15 the concert?

16 A. White Plains.

17 Q. Was it at the center there?

18 A. Correct.

19 Q. Did you actually promote that
20 concert?

21 A. Yes, we did.

22 Q. were there any other concerts
23 that you promoted?

24 A. No, not that I can recall.

25 Q. was there anyone else besides

183

1 WYNDER

2 yourself, Mr. Downing and Mr. Williams
3 that were involved in that business?

4 A. There was a gentleman who knew
5 artists. He helped out, but I can't
6 recall his name right now.

7 Q. You said that you were being
8 harassed. who particularly was doing the
9 harassing of yourself, Mr. Downing and

94278

10 Mr. Williams?

11 A. The New York State Police.

12 Q. Who particularly within the New
13 York State Police?

14 A. Internal Affairs.

15 Q. Who particularly within Internal
16 Affairs?

17 A. Captain Masterson, Captain Spahl
18 who had just came out of Internal
19 Affairs.

20 Q. Anyone else?

21 A. Captain Klusacek.

22 Q. Anyone else?

23 A. Superintendent.

24 Q. Superintendent McMahon?

25 A. Yes.

184

1 WYNDER

2 Q. Anyone else?

3 A. At what period are we talking
4 about? At that time, during the
5 concerts?

6 Q. Well, let me go back.

7 I believe your testimony was,
8 and correct me if I'm wrong, that -- I
9 asked you why the business dissolved and
10 you said that it dissolved because of the
11 harassment by the State Police, correct?

12 A. Correct.

94278

13 Q. So we're talking about the time
14 period when you, Mr. Downing and
15 Mr. Williams were involved in the
16 business? That entire time period?

17 A. Correct.

18 Q. Anyone else besides Captain
19 Masterson, Spahl, Klusacek and the
20 superintendent?

21 A. Preston Felton.

22 Q. Who is Preston Felton?

23 A. At that time he was a lieutenant
24 in Internal Affairs.

25 Q. Anyone else?

□

185

1 WYNDER

2 A. Not that I can recall right now.

3 Q. I want to go through the
4 harassment.

5 Now, Captain Masterson,
6 particularly what was he doing to harass
7 you, Mr. Downing and Mr. Williams at that
8 time?

9 A. Well, he was personal friends
10 with Captain Spahl and the two of them
11 constantly stayed in touch.

12 Q. What did they do to harass you?

13 A. Whenever I did something wrong,
14 Captain Spahl would call Captain Masterson
15 and then charges would start coming my

94278

16 way.

17 Q. Can you give me an example of
18 what you did wrong and what charges came
19 your way?

20 A. Okay. One was while in the
21 station, numerous times Captain Spahl felt
22 that he wasn't saluted, so he brought me
23 up on charges for failing to salute an
24 officer.

25 Q. This was at SP Hawthorne?

186

1 WYNDER

2 A. Correct.

3 Q. Had you saluted him?

4 A. No, I did not.

5 Q. Is it customary for troopers to
6 salute the captain?

7 A. Yes, if they are outside with
8 their Stetson on and they are not busy.
9 The manual states that if -- when you
10 don't salute an officer is when it's an
11 inconvenience to you or inconvenience to
12 that officer, at which time I stated --
13 during that time Captain Spahl had
14 Internal Affairs come down and take a
15 statement from me for failing to salute an
16 officer which is not Internal Affairs'
17 job. Internal Affairs only comes if
18 there's a criminal matter that's been

94278

19 involved -- that's why it's called
20 Internal Affairs.
21 That incident should have been
22 handled by my sergeant and then by troop
23 command, but of course because Captain
24 Spahl was good friends with Captain
25 Masterson, he brought in Internal Affairs

□

187

1 WYNDER
2 to try and scare me and try and take a
3 statement from me and bring me up and
4 charges.
5 Q. Did they take a statement from
6 you?
7 A. Yes, they did.
8 Q. Who took the statements?
9 A. I can't recall who the two
10 Internal Affairs officers were. If I saw
11 the names, I would remember them.
12 Q. After the statement was taken,
13 what was the results of the charges
14 brought against you?
15 A. Well, that's the problem that we
16 have here. Any complaint that started in
17 the New York State Police has to be
18 finished with a disposition, either
19 unfounded or founded, and for some odd
20 reason that complaint never was furnished
21 with founded or unfounded. It also was
Page 169

94278

22 done out of chain of command and in
23 violation of State Police rules and
24 regulations.
25 Q. whose responsibility do you

188

1 WYNDER
2 believe it is for the way that that
3 occurred?
4 A. I don't understand what you're
5 trying to say.
6 Q. That was unclear. I will
7 restate that.
8 who do you believe was
9 responsible for getting you a decision as
10 to whether it was founded or unfounded?
11 A. That's in the rules and regs
12 which is overseen by Superintendent James
13 McMahon, and because I felt because I was
14 black and this was the first time any
15 trooper had ever been brought up on
16 charges for failing to salute their
17 superior officer --
18 Q. How do you know that that was
19 the first time?
20 A. Because nobody has ever been
21 brought up on charges for failing to
22 salute an officer.
23 Q. How do you know that? what's
24 the basis of that information?
Page 170

94278

25 A. Well, the PBA told me that and

□

189

1 WYNDER

2 they have records of all incidents.

3 Q. Who in the PBA told you that?

4 A. Al Wolford.

5 Q. Did you have a hearing as a
6 result of these charges?

7 A. No. Again, another violation of
8 rules and regs. Once they took a
9 statement, there should have been a
10 hearing or there should have been a letter
11 saying that it was unfounded, none of
12 which was ever provided to me till this
13 day, which led me to believe that this was
14 a witch-hunt and Captain Spahl and Captain
15 Masterson were single-handedly going to
16 make sure that they made my working
17 conditions so hostile that I wouldn't be
18 able to do my job.

19 Q. After the statement was taken
20 from you, did you ask anyone as to what
21 the results of these charges were?

22 A. Of course.

23 Q. Who did you ask?

24 A. I asked my sergeant.

25 Q. Who was that at the time?

□

94278

190

1 WYNDER

2 A. That was Sergeant Antalek. I
3 asked my PBA rep. I asked the PBA
4 president. I called Internal Affairs,
5 Captain Masterson.

6 Q. You spoke with Captain Masterson
7 directly?

8 A. I believe I spoke to him and
9 asked him where was the disposition of
10 these charges? We requested it at my
11 hearing, we requested it at my Workers'
12 Compensation hearing, and till this day,
13 we've been denied this letter that is
14 supposed to be there. If this was a
15 legitimate complaint, it should have been
16 documented, it should have been
17 investigated and it should have been
18 closed with a disposition.

19 And it has not been done and
20 that was because I was black, it was the
21 color of my skin, and Captain Spahl was
22 trying to make my job so bad that I
23 wouldn't work there. I mean every trooper
24 was shocked, being brought up on charges
25 for failing to salute an officer.

191

1 WYNDER

94278

2 Q. Let me ask you, have you seen
3 any paperwork relating to these charges?

4 A. No. Not even my statement that
5 was administered. You're supposed to get
6 a copy of your statement because you're
7 supposed to initial it. There's no
8 paperwork that's ever been shown.

9 Q. Did you suffer any discipline as
10 a result of that charge?

11 A. What do you mean?

12 Q. Were you suspended for any
13 amount of time? Were you given a letter
14 of censure?

15 A. No. I was just being
16 scrutinized. I had to be pulled off the
17 road to take a statement. I was stressed
18 out. I was threatened.

19 Q. When you say you were
20 threatened, who threatened you?

21 A. I was threatened by Captain
22 Spahl.

23 Q. What was the threat?

24 A. That he was going to make sure
25 that I followed rules and regulations,

□

192

1 WYNDER

2 which I was doing, and that he was going
3 to keep a constant eye on me.

4 Q. So would it be fair to say that

94278

5 other than the statement that you gave and
6 the interaction you had with Captain
7 Spahl, you never lost any time on the job
8 as a result of the failing to salute,
9 correct?

10 A. No, the only thing I lost was
11 credibility. I lost a couple of friends.
12 People now started to shy away from me
13 because they were starting to see a
14 pattern of every time you turned around, I
15 was being brought up on charges.

16 Q. When you say you lost
17 credibility, what do you mean?

18 A. Well, they started questioning
19 everything that I did in the station.
20 Captain Spahl.

21 Q. Who is --

22 A. Captain Spahl.

23 I'll give you an example. I was
24 sitting at the desk -- we have what we
25 call desk duty. I decided to -- we

193

1

WYNDER

2 have -- the troopers in the morning, we
3 usually have -- one trooper runs and gets
4 coffee and bagels for everybody, and at
5 this point I told them that I would go,
6 since I was going to be on the desk and
7 inside all day, I wanted to go on the road

94278

8 for a while.

9 So I said, "I'll go and get it."

10 That was accepted. Everybody was asked
11 for money to buy a bagel and a coffee,
12 everybody in the station, Captain Spahl,
13 sergeants, everybody. I went, picked up
14 the bagels and the coffee, I came back.
15 Must have been in my seat five minutes and
16 a phone call came in and they asked for --
17 may I speak to station commander -- not
18 station commander, can I speak to Zone
19 Commander Captain Spahl. And I
20 transferred the call to him. 10 minutes
21 later the sergeant comes up to me and
22 tells me that he needs a memo from me and
23 there's going to be an investigation
24 into -- there were allegations that a
25 trooper was receiving free food at this

194

1 WYNDER

2 bagel shop.

3 Q. Had you actually received free
4 food at the bagel shop?

5 A. No, we did not, we paid for the
6 bagels and the coffee.

7 Q. Who is "we"?

8 A. It was just me. I was the only
9 one that went and picked it up. That was
10 the whole deal. One trooper had to pick

94278

11 up all the stuff.

12 Q. So there was no one else with
13 you, it was you who picked it up?

14 A. Yes.

15 Q. What was the name of the bagel
16 shop?

17 A. I don't recall. Hawthorne
18 Bagels.

19 Q. Is there more than one bagel
20 shop in Hawthorne?

21 A. I can't recall that. I am --
22 I'm quite sure the State Police knows,
23 because he took down their name and he
24 said that I had to have a memo and he
25 wanted an investigation done into why

□

195

1 WYNDER

2 troopers were taking free food, and
3 somebody -- that telephone call was a
4 complaint saying that a black trooper came
5 in and cut the line and went up and got
6 free food.

7 Q. Had you done that?

8 A. No, I did not. I waited on line
9 and I paid for our food.

10 And once Sergeant Smoskey who
11 was the head of the investigation, he told
12 everybody that he -- being that he was
13 doing the investigation correctly, he said

94278
14 he needed a memo from everybody, including
15 Captain Spahl on his dollar that he put in
16 for his coffee and bagel.

17 Q. Did everyone do that?

18 A. No. At that time Captain Spahl
19 thought about it and came back and out and
20 realized that his entrapment for me would
21 include himself, considering he had a
22 bagel and coffee ordered, too, and at that
23 time he refused then to have the
24 investigation completed.

25 Q. What was your understanding of

196

1 WYNDER

2 who was responsible for initiating the

3 investigation in the first place?

4 A. I believe it was Captain Spahl,

5 and one reason is most people -- not most,

6 almost every person who calls the station

7 does not know that our captain is called

8 our zone commander. They asked for him

9 specifically as zone commander, which

10 means it had to have been somebody who was

11 familiar with the State Police functions

12 and workings.

13 Q. Do you believe that the
14 individuals from the bagel shop actually
15 made the phone call?

16 A. The individuals at the bagel

94278
17 shop did not make the phone call.
18 Q. So is it your belief that the
19 fact that a phone call came from the bagel
20 shop was totally fabricated?
21 A. I didn't say the call came from
22 the bagel shop. I said a call came in and
23 said that they witnessed a black trooper
24 cut the line and get free food.
25 Q. So you believe a call was made,

□

197

1 WYNDER
2 but that it was not necessarily made by an
3 individual who was actually at this bagel
4 shop?
5 A. I can't attest to that.
6 Actually, it had to have been somebody who
7 was at the bagel shop because they claimed
8 that a black trooper -- how many people
9 knew that I went to the bagel shop?
10 Q. Do you have any understanding of
11 who it was that made the phone call?
12 A. I don't understand what you
13 mean. Do I understand or do I have a
14 belief?
15 Q. Do you have a belief as to who
16 made the phone call?
17 A. I believe the whole situation
18 was fabricated by Captain Spahl.
19 Q. I'm a little unclear. How are

94278
20 you saying that Captain Spahl fabricated
21 the phone call?
22 A. well, because the person who
23 called asked for him by zone commander,
24 and in my years at the desk, nobody had
25 called and said, May I speak to your zone

198

1 WYNDER

2 commander unless it's another State Police

3 personnel member.

4 Q. So is it your testimony that

5 another State Police member was asked by

6 Captain Spahl to call in and make this

7 complaint?

8 A. Correct. Could have been

9 Internal Affairs. I believe it was

10 Internal Affairs, because Internal Affairs

11 was surveillancing me. So I believe it

12 was Internal Affairs, yes, I do.

13 Q. Are you saying it was Captain

14 Spahl or Internal Affairs?

15 A. It was Captain Spahl who ordered

16 Internal Affairs, in my opinion, to make

17 the phone call.

18 Q. what do you base that on?

19 A. Again, my reasoning. One, I had

20 sat at the desk in Hawthorne for nearly

21 four years and I've never picked up a

22 phone and had a civilian ask for my

94278
23 captain as a zone commander.
24 Secondly, Captain Spahl
25 immediately initiated an investigation,

□

199

1 WYNDER
2 and then when he himself would be a target
3 of the investigation because he also
4 ordered a bagel and coffee, he
5 automatically drops the investigation.
6 Q. Were you disciplined in any way
7 because of this bagel incident?
8 A. Yeah, I was reprimanded that I
9 couldn't go to the bagel shop.
10 Q. After that day, did you ever go
11 to the bagel shop again?
12 A. I stayed away from the bagel
13 shop.
14 Q. Other than being told that you
15 couldn't go to the bagel shop, was
16 anything else done?
17 A. Again, my reputation, I mean the
18 guys laughed. You know. They would order
19 the bagels and coffee and say, "Kenny, you
20 want to go get it? Sorry, you can't go
21 there, we'll go."
22 I was ridiculed. Everything I
23 did was being scrutinized by Captain
24 Spahl. My work at Hawthorne was so
25 hostile I couldn't do anything right. If

94278

200

1 WYNDER
2 I came in late, he was watching the Purse
3 29. It's a form that you sign in when you
4 come in. My job became where I couldn't
5 do my job anymore.
6 Q. When you said you couldn't do
7 your job, in what way couldn't you do your
8 job?
9 A. Well, I already gave you two
10 incidents. One, the other troopers also
11 found a lieutenant, Preston Felton, behind
12 SP Hawthorne, hiding down in a car.
13 Q. Who found that?
14 A. I think it was -- I don't
15 remember the trooper's name, but they came
16 in and told me he was in the back.
17 Q. That was another trooper who was
18 at SP Hawthorne with you?
19 A. Of course, yes.
20 Q. What did Lieutenant Felton's
21 hiding have to do with you?
22 A. Well, he was there to watch me,
23 from what I was told by this trooper.
24 Q. At that point, when Lieutenant
25 Felton was hiding --

201

94278

1 WYNDER

2 MR. MERRITT: Could we clarify
3 that? His name is Felton Preston.

4 MS. ODESSKY: It's Felton
5 Preston?

6 MR. MERRITT: It's Felton
7 Preston.

8 Q. So Lieutenant Preston; is that
9 correct?

10 A. Correct.

11 Q. At that point, how many troopers
12 would you say there were at SP Hawthorne?

13 A. I can't recall.

14 Q. Were there more than 10?

15 A. What do you mean? At the
16 station --

17 Q. Who were assigned to the
18 station.

19 A. Assigned or working that day?

20 Q. Well, let's take working that
21 day.

22 A. Probably, B line, probably no
23 more than four maybe. I can't recall.

24 Q. Why did you believe that the
25 lieutenant was watching you particularly?

□

202

1 WYNDER

2 A. Well, for one, he was never back
3 there for anybody else; and secondly, this
Page 182

94278

4 was not the first time that I heard that I
5 was being surveillanced. The first time
6 came from my neighbors at my residence in
7 the Town of Newburgh -- I mean the Town of
8 New Windsor.

9 Q. We'll go back to that in a
10 moment. Just where the lieutenant was,
11 did you actually see him watching that
12 day? Did you yourself observe him hiding?

13 A. Who, me?

14 Q. Yes.

15 A. After it was pointed out by the
16 trooper, yes.

17 Q. Where was he?

18 A. Well, he was in the back of
19 Hawthorne and at that time -- it's changed
20 now so you wouldn't know -- there was a
21 hill and there was residences up there,
22 and you could see that his car was parked
23 back there and he never came through the
24 station. Most officers, if they come
25 through the station, bring their car in,

203

1 WYNDER
2 they will come inside and sign in, and he
3 didn't do any of that that day. And he
4 didn't even gas up which is usually --
5 those are the two reasons you come
6 through, to gas up and to sign up in, go

94278

7 through the station and leave. He stayed
8 back there for a while and never came
9 through the station.

10 Q. why did you believe that the
11 lieutenant was watching you particularly
12 rather than, say, the other three or four
13 people who were in the station working at
14 that time?

15 A. Because I had been told just
16 prior to that by my neighbor in the Town
17 of New Windsor where I lived at my
18 residence that they had asked him, could
19 they set up shop in his garage to watch my
20 house.

21 Q. when you say "just prior," how
22 long before this incident with Lieutenant
23 Preston did this neighbor tell you you
24 were being watched?

25 A. I would say two weeks, a week.

□

204

1 WYNDER

2 He said that they wanted binoculars and
3 they were watching. I saw Preston
4 Felton --

5 THE WITNESS: Felton Preston?

6 A. (Continuing) But I knew that I
7 was being surveillanced. My neighbors
8 came over and told me that the State
9 Police had requested their permission to
Page 184

94278

10 set up surveillance cameras.

11 Q. Can you give me the names of the
12 neighbors that told you that?

13 A. You're talking -- you're talking
14 eight, nine years. I think his name is
15 Ed, but I don't remember his last name but
16 he -- he came up to me and he told me he
17 told them no and that he would testify on
18 my behalf because they tried -- and they
19 also told him that I was -- I was being
20 criminally investigated and they needed to
21 set up shop and watch me; and I also knew
22 that at that time, prior to that, was the
23 fact that they had went to my bank and
24 tried to issue an illegal subpoena with
25 reference to my records.

205

1 WYNDER

2 Q. When did that occur in
3 connection to when you say the lieutenant
4 was in back of SP Hawthorne watching you?

5 A. This was all -- this was like in
6 '97. This was coming towards the end of
7 1997, and I'm quite sure of that.

8 MS. ODESSKY: Off the record.

9 (Discussion off the record.)

10 MS. ODESSKY: At the agreement
11 of the parties, at this point we're going
12 to adjourn and resume this deposition on
Page 185

94278

13 Monday morning at 11:00 or shortly
14 thereafter. It's about 3:55 right now.

15 MR. MERRITT: I just submitted
16 one exhibit today. I think it was Exhibit
17 B. Just so I have a complete record that
18 I'm able to get copies --

19 MS. ODESSKY: Yes, I will make
20 them for you before you go.

21 MR. MERRITT: There's one other
22 exhibit that you may or may not have. I
23 found it in the box, but you had asked the
24 witness about whether or not he had got
25 approval for outside employment while he

□

206

1 WYNDER
2 worked for the State troopers and he had
3 testified that John S. Smoskey had
4 submitted the request and it's signed by
5 -- it looks like a J.M. Perez but we do
6 have -- a copy of that approval.

7 MS. ODESSKY: I'll take a copy
8 of that -- I may have had that in the box,
9 but let me just take a copy and I'll make
10 copies of these for you before you go.

11 (Time noted: 3:57 p.m.)

12

13

14

15

94278

16

17

KENNETH N. WYNDER, JR.

18

19 subscribed and sworn to before me

20 this day of , 2005

21

22

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207

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C E R T I F I C A T I O N

3

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5

6

I, TAMMY O'BERG, a Shorthand

7

Reporter and a Notary Public, do hereby

8

certify that the foregoing witness,

9

KENNETH N. WYNDER, JR., was duly sworn on

10

the date indicated, and that the foregoing

11

is a true and accurate transcription of my

12

stenographic notes.

13

I further certify that I am not

14

employed by nor related to any party to

15

this action.

16

17

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TAMMY O'BERG

□

208

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E X H I B I T S

DEFENDANTS'

EXHIBIT

DESCRIPTION

PAGE

A

Third Amended Complaint 3

B

Judgment 26

C

Letter dated 12/28/99 37

94278

22
23
24
25

□

209

1		
2	EXAMINATION BY	PAGE
3		
4		
5	MS. ODESSKY	4
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
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94278

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210

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LITIGATION SUPPORT INDEX

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DIRECTION TO WITNESS NOT TO ANSWER

6

Page	Line	Page	Line
------	------	------	------

7

20	12		
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8

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10

REQUEST FOR PRODUCTION OF DOCUMENTS

11

Page	Line	Page	Line
------	------	------	------

12

13

14

15

INFORMATION TO BE FURNISHED

16

Page	Line	Page	Line
------	------	------	------

17

19	6		
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18

19

QUESTIONS MARKED FOR A RULING

20

Page	Line	Page	Line
------	------	------	------

21

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